UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

TIMOTHY KING, MARIAN ELLEN SHERIDAN, JOHN EARL HAGGARD, CHARLES JAMES RITCHARD, JAMES DAVID HOOPER, and DARREN WADE RUBINGH,

Plaintiffs,

v

GRETCHEN WHITMER, in her official capacity as Governor of the State of Michigan, JOCELYN BENSON, in her official capacity as Michigan Secretary of State and the Michigan BOARD OF STATE CANVASSERS,

Defendants,

CITY OF DETROIT,
Intervening Defendant,

ROBERT DAVIS,
Intervening Defendant,

DEMOCRATIC NATIONAL COMMITTEE and MICHIGAN DEMOCRATIC PARTY,

Intervening Defendants.

No. 2-20-cv-13134

HON. LINDA V. PARKER

MAG. R. STEVEN WHALEN

**DEFENDANTS WHITMER AND BENSON'S MOTION FOR SANCTIONS UNDER 28 U.S.C. § 1927**

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**DEFENDANTS WHITMER AND BENSON'S MOTION FOR SANCTIONS UNDER 28 U.S.C. § 1927**

Defendants Governor Gretchen Whitmer and Secretary of State Jocelyn Benson,[1] move for sanctions and an award of attorneys' fees pursuant to 28 U.S.C. § 1927 for the following reasons:

1. Section 1927 states that "[a]ny attorney ... who so multiplies the proceedings in any case unreasonably and vexatiously may be required by the court to satisfy personally the excess costs, expenses, and attorneys' fees reasonably incurred because of such conduct." 28 U.S.C. § 1927.

2. Under this statute, the attorney's subjective bad faith is not relevant because the court applies an objective standard, and "sanctions under section 1927 [are appropriate] when it determines that an attorney reasonably should know that a claim pursued is frivolous." *Salkil v. Mount Sterling Tp. Police Dep't,* 458 F.3d

[1] Defendant Board of State Canvassers does not join in this motion.

520, 532 (6th Cir. 2006) (quoting *Jones v. Continental Corp.,* 789 F.2d 1225, 1230 (6th Cir.1986)).

3. The imposition of sanctions against Plaintiffs' counsel is warranted for two reasons under this statute.

4. First, Plaintiffs' counsel unreasonably and vexatiously multiplied the proceedings in this litigation by failing to dismiss the case when their claims became moot, which plainly occurred upon the vote of Michigan's electors on December 14, if not earlier.

5. And second, Plaintiffs' counsel knew or should have known that their legal claims were frivolous, but counsel pursued them nonetheless, even after the Court's opinion concluding that Plaintiffs' were unlikely to succeed on the merits of their claims for multiple reasons.

6. As a result, this Court should impose sanctions against Plaintiffs' counsel and award attorneys' fees to Defendants' counsel, the Michigan Department of Attorney General.

7. Alternatively, or in addition to § 1927, this Court should exercise its inherent authority to sanction Plaintiffs' counsel and award attorneys' fees.

8. Federal courts have "inherent power to assess attorney's fees against counsel who willfully abuse judicial processes or who otherwise act in bad faith." *Red Carpet Studios Div. of Source Advantage, Ltd. v. Sater,* 465 F.3d 642, 646 (6th Cir. 2006).

9. Attorney's fees are appropriate where a court finds: "[1] that the claims advanced were meritless, [2] that counsel knew or should have known this, and [3] that the motive for filing the suit was for an improper purpose such as harassment." *Big Yank Corp. v. Liberty Mut. Fire Ins. Co.*, 125 F.3d 308, 313 (6th Cir. 1997) (internal quotation marks and citations omitted).

10. Here, Plaintiffs' claims of fraud in Michigan's election were unsupported by any credible evidence and their legal claims were without merit for numerous reasons, as explained by the Court in its December 7 opinion and order. And Plaintiffs' counsel knew or should have known this to be the case.

11. Further, Plaintiffs filed this litigation for an improper purpose. This is amply demonstrated by Plaintiffs' counsels' filings and the manner in which they litigated this case.

12. Indeed, it was never about winning on the merits of the claims, but rather Plaintiffs' purpose was to undermine the integrity of the election results and the people's trust in the electoral process and in government.

13. The filing of litigation for that purpose is clearly an abuse of the judicial process and warrants the imposition of sanctions.

14. Concurrence was sought for the relief requested in this motion but was not obtained.

For these reasons and the reasons stated more fully in the accompanying brief in support, Defendants Governor Gretchen Whitmer and Secretary of State

Jocelyn Benson respectfully request that this Honorable Court enter an Order granting their motion for sanctions under 28 U.S.C. § 1927 or the Court's inherent authority, and award attorneys' fees in the amount of $11,071.00 to the Michigan Department of Attorney General.

Respectfully submitted,

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Dated: January 28, 2021

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EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

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## CONCISE STATEMENT OF ISSUE PRESENTED

1. Whether Defendants Whitmer and Benson's motion for sanctions should be granted and an award of attorneys' fees entered in favor of the Michigan Department of Attorney General under 28 U.S.C. § 1927 or under the Court's inherent authority to award fees where Plaintiffs' counsel unreasonably multiplied the proceedings in this case and abused the judicial process?

## INTRODUCTION

> An attorney's ethical obligation of zealous advocacy on behalf of his or her client does not amount to *carte blanche* to burden the federal courts by pursuing claims that are frivolous on the merits, or by pursuing nonfrivolous claims through the use of multiplicative litigation tactics that are harassing, dilatory, or otherwise "unreasonable and vexatious." Accordingly, at least when an attorney knows or reasonably should know that a claim pursued is frivolous, or that his or her litigation tactics will needlessly obstruct the litigation of nonfrivolous claims, a trial court does not err by assessing fees attributable to such actions against the attorney.[1]

Plaintiffs' counsel—Sidney Powell, Stefanie Lambert Junttila, Greg Rohl, and Scott Hagerstrom—lost sight of the professional duties owed to this Court and to the public in pursuing this litigation. Filed at the eleventh hour and repeating allegations of election fraud supported by nothing more than speculation and conjecture, Plaintiffs' counsel pursued legal claims that they knew or should have known were frivolous. Further, Plaintiffs' counsel unreasonably and vexatiously extended this case by failing to dismiss when it was clearly moot by their own acknowledgement. As a result, imposing sanctions is entirely appropriate and warranted in this matter. 28 U.S.C. § 1927.

This Court also has inherent authority to impose sanctions and award attorneys' fees where counsel pursues frivolous claims and does so for an improper purpose. Again, Plaintiffs' complaint offered nothing more than conspiracy

[1] *Jones v. Continental Corp.*, 789 F.2d 1225, 1230 (6th Cir. 1986).

theories unaccompanied by any actual evidence of fraud affecting the results of Michigan's presidential election. Where their legal claims were frivolous, and the timing of the lawsuit and the nature of the relief requested suspect, it is plain counsels' motive in filing suit was improper. This Court recognized as much, stating in its earlier opinion that this "lawsuit seems to be less about achieving the relief Plaintiffs seek . . . and more about the impact of their allegations on People's faith in the democratic process and their trust in our government." (ECF No. 62, Op. & Order, PageID.3329-3330.)

The Court was right. The apparent purpose of this case—one of Ms. Powell's "Kraken" lawsuits—was to foment distrust in the process and provide a false narrative upon which individuals could advocate for overturning Michigan's vote.[2] This was a clear abuse of the judicial process, and Plaintiffs' counsel should be sanctioned as a result.

[2] *See* Sidney Powell's 'Kraken' Voter Fraud Lawsuits Ridiculed by Legal Experts Over Typos, Lack of Evidence, 11/26/20, available at https://www.newsweek.com/sidney-powell-kraken-lawsuit-typo-voter-fraud-1550534 (accessed January 28, 2021.)

## STATEMENT OF FACTS

### A. Michigan certifies the November election.

Michigan, like the other states and the District of Columbia, held an election on November 3, 2020 to select electors for president and vice president. See Mich. Comp Laws § 168.43.

Michigan's city and township clerks began canvassing results immediately after the polls closed on November 3. Mich. Comp. Laws § 168.801. The boards of county canvassers commenced canvassing two days later, and the 83 county boards completed their canvasses by November 17. Mich. Comp. Laws §§ 168.821, 168.822.

Defendant Board of State Canvassers, a bi-partisan board, see Mich. Comp. Laws § 168.22, was required to meet by the twentieth day after the election to certify the results. Mich. Comp. Laws § 168.842(1). The Board met on November 23 and certified the statewide results by a 3-0 vote.[3] President-elect Joe Biden defeated President Donald Trump by 154,188 votes.[4] No presidential candidate requested a recount within the time permitted. See Mich. Comp. Laws § 168.879(1)(c).

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[3] *See* 11/23/20 Draft Meeting Minutes, Board of State Canvassers, available at https://www.michigan.gov/documents/sos/112320_draft_minutes_708672_7.pdf, (accessed January 28, 2021.)

[4] *See* November 2020 General Election Results, available at https://mielections.us/election/results/2020GEN_CENR.html., (accessed January 28, 2021.)

"As soon as practicable after the state board of canvassers has" certified the results, the Governor must certify the presidential electors to the Archivist for the United States. Mich. Comp. Laws § 168.46; 3 U.S.C. § 6.[5] Defendant Governor Whitmer certified the electors the same day the Board certified the results.[6]

### B. Plaintiffs file suit and the Court denies their motion for injunctive relief on numerous grounds.

Late in the evening on November 25 and the day before Thanksgiving, Plaintiffs, several Republican Party electors and operatives, filed their complaint for declaratory and injunctive relief in this Court against Michigan Secretary of State Jocelyn Benson, Governor Whitmer, and the Board of State Canvassers. (ECF No. 1, PageID.1.) Plaintiffs alleged widespread fraud in the distribution, collection, and counting of ballots in Michigan, as well as violations of state law as to certain election challengers and the manipulation of ballots through corrupt election machines and software. (*Id.*) Four days later, Plaintiffs filed an amended complaint (ECF No. 6, Am. Compl., PageID.872), an emergency motion for declaratory and injunctive relief on November 29, 2020 (ECF No. 7, Mot., PageID.1832), and an emergency motion to seal. (ECF No. 8. PageID.1850.)

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[5] Although Michigan's statute continues to refer to the U.S. Secretary of State, under 3 U.S.C. § 6 the Certificate of Ascertainment is sent to the Archivist of the United States.

[6] *See* Michigan's Certificate of Ascertainment, available at https://www.archives.gov/files/electoral-college/2020/ascertainment-michigan.pdf, (accessed January 28, 2021.)

Plaintiffs asserted in their injunctive motion that relief "must be granted in advance of December 8, 2020." (ECF No. 7, Plfs' Mot, PageID.1846).[7]

Plaintiffs' amended complaint consisted of over 200 numbered paragraphs and over 900 additional pages of affidavits and other documents, in which they raised the same litany of perceived fraud and irregularities that had been alleged in other Michigan cases and rejected by the courts. (ECF No. 6, Am. Compl., PageID.872.) Plaintiffs alleged three claims pursuant to 42 U.S.C. § 1983: (Count I) violation of the Elections and Electors Clauses; (Count II) violation of the Fourteenth Amendment Equal Protection Clause; and (Count III) denial of the Fourteenth Amendment Due Process Clause. (ECF No. 6, PageID.882.) In Count IV, Plaintiffs alleged violations of the Michigan Election Law. (*Id.*)

On December 1, motions to intervene were filed by the City of Detroit (ECF No. 15, PageID.2090), Robert Davis (ECF No. 12, PageID.1860), and the Democratic National Committee and Michigan Democratic Party ("DNC/MDP"). (ECF No. 14, PageID.1878.) On December 2, the Court granted the motions to intervene. (ECF No. 28, Page ID.2142.) Defendants filed response briefs with respect to Plaintiffs' emergency motions by 8:00 p.m. the same day. (ECF Nos. 29, 31, 32, 34, 35, 36, 37, 39, 49, 50.)

[7] Under federal law, the "safe harbor" provision regarding Michigan's certification of electors was set to activate on December 8. *See* 3 U.S.C. § 5.

On December 7, 2020, this Court entered an opinion and order denying Plaintiffs' emergency motion for injunctive relief, holding that Plaintiffs failed to demonstrate a likelihood of success on the merits of their claims for numerous reasons. (ECF No. 62, Op. & Order, PageID.3301–3328.) The Court further concluded that the irreparable harm, balance of harm, and public interest factors weighed against granting relief. (*Id*. at PageID.3329.)

### C. Plaintiffs continue to press their claims despite the Court's ruling and subsequent events rendering the case moot.

The next day, December 8, Plaintiffs filed a notice of appeal to the Sixth Circuit Court of Appeals. (ECF No. 64, PageID.333.) But Plaintiffs did not move to expedite their appeal, likely because the State of Texas moved to file an original action against Michigan and several other "swing" states in the U.S. Supreme Court on December 7, alleging similar allegations of widespread fraud in Michigan's general election, and requesting that the Supreme Court overturn Michigan's certified results. See *Texas* v. *Pennsylvania, et al*., 20-22O155. But on December 11, the Supreme Court denied Texas's motion "for lack of standing under Article III of the Constitution" because "Texas ha[d] not demonstrated a

judicially cognizable interest in the manner in which another State conducts its elections."[8]

Plaintiffs then pivoted and filed a petition for certiorari in the Supreme Court on December 11, seeking to bypass review of this Court's opinion by the Sixth Circuit. *See* U.S. Supreme Court No. 20-815.[9] Plaintiffs did not move to expedite their petition at that time.[10]

Three days later, on December 14, and as required by law, Michigan's presidential electors "convene[d]" in the State's capitol and cast their votes for

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[8] *See* order dated December 11, 2020, in Case No. 20-22O155, available at https://www.supremecourt.gov/orders/courtorders/121120zr_p860.pdf (accessed January 28, 2021.)

[9] Docket sheet and filings available at https://www.supremecourt.gov/search.aspx?filename=/docket/docketfiles/html/public/20-815.html.

[10] Plaintiffs submitted to the Supreme Court a "preliminary report" of a purported forensic exam of a single Dominion Voting Systems tabulator used in Antrim County, Michigan, and generated in connection with pending litigation in *Bailey v. Antrim County, et al.*, Antrim Circuit Court No. 20-9238. The report was released on December 14 and is not part of the record here. But this report has largely been repudiated. *See* Antrim County audit shows 12-vote gain for Trump, 12/17/20, The Detroit News, available at https://www.detroitnews.com/story/news/local/michigan/2020/12/17/antrim-county-audit-shows-12-vote-gain-trump/3938988001/ (accessed January 28, 2021.) And Michigan legislators have stated that there is no evidence of fraud perpetuated by Dominion Voting Systems. *See, e.g.*, statement by State Senator Ed McBroom, available at https://www.detroitnews.com/story/news/local/michigan/2020/12/17/antrim-county-audit-shows-12-vote-gain-trump/3938988001/ (accessed January 28, 2021).

President-elect Biden. Mich. Comp. Laws § 168.47; 3 U.S.C. § 7.[11] They did so under heavy security in light of credible threats of violence that required the capitol and other state buildings be closed to the public.[12]

On the same day and outside Michigan's capitol, presidential electors selected by the Republican Party, presumably including some of the Plaintiffs herein, sought access to the capitol in order to cast alternate votes for President Trump. They were not allowed access to the building, however, because there is no process for permitting the unsuccessful electors to cast their votes.[13] Furthermore, leadership for both the Michigan House of Representatives and the Michigan Senate had indicated that the results of the election and the presidential electors' must stand under the law.[14]

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[11] *See* Michigan's Certificate of the Votes, available at https://www.archives.gov/files/electoral-college/2020/vote-michigan.pdf (accessed January 28, 2021.)

[12] *See* Michigan Gov. Whitmer Addresses Security Threat to Electoral College Vote, 12/14/20, National Public Radio, available at https://www.npr.org/sections/biden-transition-updates/2020/12/14/946243439/michigan-gov-whitmer-addresses-security-threat-to-electoral-college-vote (accessed January 28, 2021.)

[13] *See* Michigan Republicans who cast electoral votes for Trump have no chance of changing Electoral College result, 12/15/20, MLIVE, available at https://www.mlive.com/public-interest/2020/12/michigan-republicans-who-cast-electoral-votes-for-trump-have-no-chance-of-changing-electoral-college-result.html (accessed January 28, 2021.)

[14] *Id.*

Days later, on December 18, Plaintiffs moved to expedite their petition for certiorari in the Supreme Court and to consolidate it with another pending petition.[15] Defendants Whitmer, Benson and the Board filed a response in opposition to Plaintiffs' motion.[16]

Back in this Court, on December 22, Defendants Whitmer, Benson and the Board, (ECF No. 70, Defs' Mot. & Brf., PageID.3350-3428), along with Intervening Defendants City of Detroit, the DNC and the MDP, filed motions to dismiss the case.

On January 6, 2021, Congress convened in a joint session as required by 3 U.S.C. § 15 to count the electoral votes of the fifty states and the District of Columbia. Despite the shocking events that later occurred, in the early hours of January 7, Congress counted Michigan's 16 electoral votes for President-elect Biden. And at the end of the joint session, Mr. Biden was certified the winner and the new President. With that declaration, the November 3, 2020, presidential election concluded.

Not surprisingly, the Supreme Court thereafter denied Plaintiffs' motion to expedite their appeal on January 11, 2021 in a short order.[17]

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[15] Docket sheet and filings available at https://www.supremecourt.gov/search.aspx?filename=/docket/docketfiles/html/public/20-815.html.

[16] *Id.*

[17] *Id.*

The next day, back in this Court, Plaintiffs requested an extension until January 19 to respond to the motions to dismiss, (ECF No. 82), and the City of Detroit filed a response in opposition (ECF No. 83). By text order, this Court granted Plaintiffs an extension until January 14, 2021.

On January 14, instead of responding to the motions to dismiss, Plaintiffs filed notices of voluntary dismissal under Rule 41 as to all Defendants except Robert Davis (who had answered the amended complaint). (ECF Nos. 86 through 91.) Subsequently, Plaintiffs moved for a voluntary dismissal as to Davis. (ECF No. 92.)

Notably, also on January 14, Defendants Whitmer, Benson, and the Board, as well as the City of Detroit, filed responses in opposition to Plaintiffs' petition in the Supreme Court since Plaintiffs had not withdrawn or dismissed that appeal despite the vote in Congress seven days earlier.[18]

Defendants Governor Whitmer and Secretary Benson now bring the instant motion for sanctions pursuant to 28 U.S.C. § 1927 and the Court's inherent authority to sanction counsel and award attorneys' fees.[19]

[18] *Id.*

[19] Defendant Board of State Canvassers does not join in this motion.

## ARGUMENT

### I. Defendants Governor Whitmer and Secretary Benson are entitled to sanctions and an award of attorneys' fees under 28 U.S.C. § 1927 after Plaintiffs' counsel unreasonably and vexatiously multiplied the proceedings in this frivolous case. Alternatively, this Court should exercise its inherent authority to impose sanctions and award attorneys' fees in favor of these Defendants.

Plaintiffs' counsel, Michigan attorneys Greg Rohl (P39185), Richard Scott Hagerstrom (P57885), and Stefanie Lambert Juntilla (P71303), and Texas attorney Sydney Powell (Texas Bar No. 16209700), should be sanctioned under 28 U.S.C. § 1927, and an award of attorneys' fees be entered in this matter. Alternatively, or in addition to § 1927, this Court should impose sanctions and award fees pursuant to its inherent authority.

#### A. Defendants are entitled to sanctions under 28 U.S.C. § 1927.

##### 1. Standards for granting sanctions under § 1927.

Defendants seek sanctions under 28 U.S.C. § 1927. That statute states that "[a]ny attorney ... who so multiplies the proceedings in any case unreasonably and vexatiously may be required by the court to satisfy personally the excess costs, expenses, and attorneys' fees reasonably incurred because of such conduct." 28 U.S.C. § 1927. Under this statute, the attorney's subjective bad faith is not relevant because the court applies an objective standard, and "sanctions under section 1927 [are appropriate] when it determines that an attorney reasonably should know that a claim pursued is frivolous." *Salkil v. Mount Sterling Tp. Police Dep't,* 458 F.3d

520, 532 (6th Cir. 2006) (quoting *Jones v. Continental Corp.,* 789 F.2d 1225, 1230 (6th Cir.1986)). "Simple inadvertence or negligence, however, will not support sanctions under § 1927." *Salkil*, 458 F.3d at 532 (citing *Ridder v. City of Springfield,* 109 F.3d 288, 298 (6th Cir.1997).) " 'There must be some conduct on the part of the subject attorney that trial judges, applying collective wisdom of their experience on the bench could agree falls short of the obligations owed by a member of the bar to the court.' " *Id.* (quoting *Ridder*, 109 F.3d at 298, quoting *In re Ruben,* 825 F.2d 977, 984 (6th Cir. 1987)).

**2. Plaintiffs' counsel unreasonably and vexatiously perpetuated moot and frivolous claims.**

In denying Plaintiffs' emergency motion for declaratory and injunctive relief, this Court concluded that the Eleventh Amendment barred Plaintiffs' claims, including their state-law claims; that their claims were moot; that their claims were barred by laches; that abstention applied; that Plaintiffs lacked standing to bring their equal protection, Electors Clause and Elections Clause claims; and that as a result Plaintiffs had no likelihood of succeeding on the merits of their claims. (ECF No. 62, Op. & Order, PageID.3301-3328.)

In addressing mootness, this Court observed, "[t]he time has passed to provide most of the relief Plaintiffs request in their Amended Complaint; the remaining relief is beyond the power of any court." *Id*., PageID.3307. The Court summarized the relief Plaintiffs' requested in their amended complaint:

> Plaintiffs ask the Court to: (a) order Defendants to decertify the results of the election; (b) enjoin Secretary Benson and Governor Whitmer from transmitting the certified election results to the Electoral College; (c) order Defendants "to transmit certified election results that state that President Donald Trump is the winner of the election"; (d) impound all voting machines and software in Michigan for expert inspection; (e) order that no votes received or tabulated by machines not certified as required by federal and state law be counted; and, (f) enter a declaratory judgment that mail-in and absentee ballot fraud must be remedied with a manual recount or statistically valid sampling. (ECF No. 6 at Pg ID 955-56, ¶ 233.)

*Id*., PageID.3308. The Court observed that "[w]hat relief [it] could grant Plaintiffs is no longer available." *Id.* As the Court recognized, all 83 Michigan Counties and the Defendant Board of State Canvassers had certified the election results, and Defendant Whitmer had already certified Michigan's electors before Plaintiffs even filed their lawsuit. *Id*. Further, the time had also run for challenging the election based on voting equipment errors and for seeking a recount under Michigan's statutory processes. *Id*., PageID.3309. Indeed, Plaintiffs could have requested a recount under Michigan Election Law, but did not, asking this Court to order one instead. As the Court noted, "[a]ny avenue for this Court to provide meaningful relief has been foreclosed," and thus "Plaintiffs' requested relief concerning the 2020 General Election is moot." *Id.*, PageID.3309-3310.

The Court rendered this decision on December 7, Plaintiffs filed a notice of appeal to the Sixth Circuit on December 8, and then did nothing to advance that appeal. (ECF No. 64, PageID.3332.) They waited three days and then filed their

petition for certiorari on December 11, and then waited another seven days to move to expedite their petition before the Supreme Court. That was four days after Michigan's electors had voted, an act Plaintiffs sought to enjoin.

Notably, in their petition for certiorari, Plaintiffs and their counsel recognized that their claims would be moot absent expedited consideration by that Court. They noted they sought "immediate preliminary relief . . . to maintain the status quo *so that the passage of time and the actions of [Defendants] do not render the case moot*, depriving [the Supreme] Court of the opportunity to resolve the weighty issues presented herein and [Defendants] of any possibility of obtaining meaningful relief." (Ex. A, Petition w/o exs, p. 1) (emphasis added.)

Plaintiffs asked the Supreme Court to "exercise its authority to issue the writ of certiorari and stay the vote for the Electors in Michigan," to "stay or set aside the results of the 2020 General Election in Michigan," and to "stay the Electoral College Vote[.]" (*Id*., pp 10, 15-16.) Similarly, they argued that "the Michigan results must be decertified, [and] the process for seating electors stayed[.]" (*Id*., p. 17.) They requested an "injunction prohibiting the State Respondents from transmitting the certified results[.]" (*Id*., p. 22.) In their conclusion, they asked the Supreme Court to enter an emergency order "instructing [Defendants] to de-certify the results of the General Election for the Office of President," or alternatively to order Defendants "to certify the results of the General Election for Office of the

President in favor of President Donald Trump." (*Id*., p 31.) Plaintiffs expressly acknowledged to that Court that "[*o*]*nce the electoral votes are cast, subsequent relief would be pointless*," and "*the petition would be moot*." (*Id*., pp. 7, 15) (emphasis added.)

Thus, to the extent the case was not already moot as this Court held on December 7, Plaintiffs and their counsel knew that this case would be moot once the electors voted on December 14. Yet, that date came and went with no acknowledgement by Plaintiffs and their counsel to Defendants or this Court. As a result, Defendants Whitmer, Benson and the Board were required to follow through with filing a first responsive pleading to Plaintiffs' amended complaint on December 22. Defendants filed a motion to dismiss in lieu of answering. (ECF No. 70, Defs' Mot. & Brf., PageID.3350-3428).

In response to defense counsel's e-mail to Plaintiffs' counsel seeking concurrence in their motion to dismiss, Plaintiffs' counsel Ms. Lambert Junttila responded that since "[t]his case is on appeal to the Sixth Circuit and to the United States Supreme Court," Plaintiffs' counsel was "not in a position to respond to [the request for concurrence] until these appeals are decided," and counsel did "not believe [this Court] has jurisdiction to consider [Defendants'] motion while the case is on appeal." (Ex. B, 12/22/20 email.) This statement by Plaintiffs' counsel was of course incorrect since no stay had been entered by this Court, by the Sixth

Circuit, or by the Supreme Court in this case. In fact, Plaintiffs did not move for a stay of this case in any court. Plaintiffs' counsel presumably realized their error as they subsequently asked for an extension of time to respond to Defendants' motion on January 12, 2021, (ECF No. 82), the day their response was due under the court rule. *See* L.R. 7.1(e)(1)(B). And then, two days later, Plaintiffs' counsel filed the voluntary dismissal as to Defendants instead of responding—a month after the vote of the electors on December 14 and eight days after Congress voted.

Again, § 1927 sanctions are appropriate where "an attorney objectively 'falls short of the obligations owed by a member of the bar to the court and which, as a result, causes additional expense to the opposing party.' " *Red Carpet Studios Div. of Source Advantage, Ltd. v. Sater,* 465 F.3d 642, 646 (6th Cir. 2006) (quoting *Ruben v. Warren City Sch*., 825 F.2d 977, 984 (6th Cir. 1987)). Such sanctions are intended to "deter dilatory litigation practices and to punish aggressive tactics that far exceed zealous advocacy." *Red Carpet Studios*, 465 F.3d at 646. Section 1927 has been interpreted "to impose a continuing duty upon attorneys to dismiss claims that are no longer viable." *Dahnke v. Teamsters Local 695,* 906 F.2d 1192, 1201 n. 6 (7th Cir.1990). An attorney who is sanctioned pursuant to this statute must "personally satisfy the excess costs attributable to his [or her] misconduct." *Red Carpet Studios*, 465 F.3d at 646.

Here, Plaintiffs' case was not well-taken from its inception. As the Court noted, Plaintiffs' requested relief was nearly moot before their case was even filed. All votes, in-person or by absentee ballot, had been counted by the local clerks and canvassed by the county clerks by November 17, 2020. Mich. Comp. Laws §§ 168.821, 168.822. And once absentee ballots are taken out of their return envelopes, there is no longer any way to tie the ballot to the voter who voted it, and there is no way to tell an in-person ballot from an absentee voter ballot. The ballots become anonymous (unless the ballot was marked as a challenged ballot) once they are processed and counted. Again, the county canvasses were all completed by November 17.

The Defendant Board of State Canvassers certified the statewide election results on November 23, and the Governor sent the certificates of ascertainment the same day. The former President and/or his representatives had until 4:34 p.m. on November 25, to file for a recount based on claims of fraud or mistake in the canvass. *See* Mich. Comp. Laws § 168.879.[20] Notably, a recount need not be requested of the entire state; rather, recounts can be requested in the jurisdictions in which fraud or mistake is alleged to have occurred, i.e., Wayne County or the City of Detroit. Mich. Comp. Laws § 168.879(1)(g). But no authorized person

[20] Announcement of recount deadlines, 11/23/20, available at https://www.michigan.gov/documents/sos/112320_Recount_Announcement_708670_7.pdf (accessed January 28, 2021.)

requested a presidential recount, even though a recount is the mechanism for determining errors. *See, e.g*, *McLeod v. Kelly*, Mich 120, 129 (1942) (acknowledging that the plaintiff claimed mistakes and irregularities occurred in conducting an election, but that those were issues "to be determined only by a recount"). Instead, Plaintiffs requested that this Court order a recount, even though the former President had not requested one. Plaintiffs also requested that the Court impound all voting machines. But the cities, townships, and counties all own and/or possess custody of their voting machines, *see* Mich. Comp. Laws § 168.794a and 794b, Defendants Whitmer, Benson, and the Board, the original Defendants, do not have custody or control over any voting machines. So, Plaintiffs did not even sue the right parties with respect to that claim for relief.

There simply was no practical or effective legal relief this Court could provide at the time the original complaint was filed on November 25. Nevertheless, five days later, Plaintiffs' counsel filed an amended complaint and "emergency" motions for injunctive relief and to file documents under seal on November 30. Defendants were ordered to respond to Plaintiffs' emergency motions by 8:00 p.m. on December 2, which Defendants did. Plaintiffs' counsel should reasonably have known by that time that pursuing relief on their claims was frivolous. *Salkil*, 458 F.3d at 532. By filing the amended complaint and the emergency motions when this case was already moot, Plaintiffs' counsel

unreasonably and vexatiously multiplied the proceedings in this matter and caused unnecessary expense to the undersigned counsel and the Michigan Department of Attorney General.

And if that was not true by December 2, it was certainly true by December 14 after Michigan's electors had voted. As discussed above, Plaintiffs' counsel represented to this Nation's highest court that their claims would be moot after Michigan's electors voted. But still, Plaintiffs and their counsel did not dismiss this case, thereby necessitating the filing of motions to dismiss on December 22. Of course, Defendants did so only to have Plaintiffs' counsel voluntarily dismiss the case when it came time for their response. Again, by refusing to timely dismiss this case as moot, Plaintiffs' counsel unreasonably and vexatiously multiplied the proceedings and caused unnecessary expense to the undersigned counsel and the Department of Attorney General.

In addition to this case being moot from the beginning (or barred by laches), Plaintiffs' substantive claims were likewise frivolous. As demonstrated by the responses to Plaintiffs' emergency motion for injunctive relief filed by the instant Defendants, (ECF No. 31), the City of Detroit, (ECF No. 36,) and the DNC and MDP, (ECF No. 39), Plaintiffs' claims suffered from numerous procedural or prudential deficiencies. Further, Plaintiffs simply failed to plead viable Election Clause and Electors Clause claims, or equal protection and due process claims.

This Court, given the time that it had, walked carefully through each of these issues in denying Plaintiffs' emergency motion for injunctive relief. (ECF No. 62, Op. & Order, PageID.3301-3328.)

Even if it could be said that Plaintiffs' counsel did not reasonably know that their claims were not well pled at the time the complaints were filed, certainly that cannot be true after this Court's comprehensive December 7 opinion and order. Indeed, this Court called Plaintiffs' and their counsel out multiple times in the opinion as to the weakness of their legal claims and the lack of factual support.

As to the lack of factual support, the Court observed that Plaintiffs' claims of mishandled ballots, improper counting, and vote switching were based on the "belief[s]" of various affiants, which are not evidence. (*Id*., PageID.3326 n 9, 3327-3328.) "The closest Plaintiffs get to alleging that election machines and software changed votes for President Trump to Vice President Biden in Wayne County is an amalgamation of theories, conjecture, and speculation that such alterations were *possible*." (*Id*., PageID.3327-3328.) The Court concluded that "[w]ith nothing but speculation and conjecture that votes for President Trump were destroyed, discarded or switched to votes for Vice President Biden, Plaintiffs' equal protection claim fail[ed]." (*Id*., PageID.3328.)

Nevertheless, Plaintiffs' counsel pursued the case against Defendants "long after it should have become clear that the claims lacked any plausible factual [or

legal] basis." *Ridder,* 109 F.3d at 298 (citing *Jones v. Continental Corp.,* 789 F.2d 1225, 1230 (6th Cir.1986) (citing with approval a Seventh Circuit case affirming § 1927 sanctions where "an attorney, though not guilty of conscious impropriety, 'intentionally ... [pursues] a claim that lacks plausible legal or factual basis.' ") (quoting *Knorr Brake Corp. v. Harbil, Inc.,* 738 F.2d 223, 226-27 (7th Cir.1984)) (alteration in *Jones*). By pursuing this case after this Court's December 7 opinion, Plaintiffs' counsel unreasonably and vexatiously multiplied the proceedings and caused unnecessary expense to the undersigned counsel and the Department of Attorney General.

Here, counsels' zealousness clearly clouded their legal judgment and led them to engage in tactics that fell far short of the obligations they owed this Court as licensed attorneys. *Ridder*, 109 F.3d at 298. As a result, Defendants Whitmer and Benson request that Plaintiffs' counsel be sanctioned under § 1927.

### B. Alternatively, this Court should exercise its inherent authority and award attorneys' fees to Defendants where Plaintiffs' counsel abused the judicial process.

Alternatively, or in addition to § 1927, this Court should impose sanctions on Plaintiffs' counsel pursuant to its inherent authority.

#### 1. Standards for granting fees under the Court's inherent authority.

Federal courts have "inherent power to assess attorney's fees against counsel who willfully abuse judicial processes or who otherwise act in bad faith." *Red*

*Carpet Studios*, 465 F.3d at 646. Attorney's fees are appropriate where a court finds: "[1] that the claims advanced were meritless, [2] that counsel knew or should have known this, and [3] that the motive for filing the suit was for an improper purpose such as harassment." *Big Yank Corp. v. Liberty Mut. Fire Ins. Co.*, 125 F.3d 308, 313 (6th Cir. 1997) (internal quotation marks and citations omitted).

**2. Plaintiffs' claims were meritless, their counsel should have known this, and their real motive in filing suit was for an improper purpose.**

For the reasons already discussed above, Plaintiffs' claims were meritless, and Plaintiffs' counsel knew or should have known this to be so. Further, Defendants submit that Plaintiffs' and counsels' motive in filing this suit was for an improper purpose. This is amply demonstrated by Plaintiffs' counsels' filings and the manner in which they litigated this case.

First, there is the issue of timing. As the Court noted in its laches analysis, Plaintiffs "showed no diligence in asserting" their claims, and could have brought their claims regarding election challengers, ballot processing or tabulating errors, and "glitches" in election machines and software before Election Day or shortly thereafter, but certainly before the election results were certified. (ECF No. 62, Op. & Order, PageID.3311.) But Plaintiffs proffered "no persuasive explanation as to why they waited so long to file this suit." *Id*. And "where there is no reasonable

explanation, there can be no true justification." *Id*. Indeed, "Plaintiffs could have lodged their constitutional challenges much sooner than they did, and certainly not three weeks after Election Day and one week after certification of almost three million votes." (*Id*., PageID.3313.)

Second, there is the issue of the relief requested. As this Court noted, the relief Plaintiffs sought was "stunning it its scope and breathtaking in its reach. If granted, the relief would disenfranchise the votes" of millions of Michigan voters. (*Id*., PageID.3296.) Indeed, Plaintiff sought to "undo what ha[d] already occurred" with respect to the certification of the election results and the electors, and "[t]o the extent Plaintiffs ask[ed] the Court to certify the results in favor of President Donald J. Trump, such relief [was] beyond its powers." (*Id*., PageID.3306 & n 2.) And Plaintiffs sought this relief, despite the fact Michigan's Election Law provides a specific mechanism for challenging results based on fraud or mistake—a recount. As the Court observed, "Plaintiffs ask[ed] this Court to ignore the orderly statutory scheme established to challenge elections and to ignore the will of millions of voters." (*Id*., PageID.3330.)

Third, there is the issue of the factual underpinnings of Plaintiffs' lawsuit. As Defendants noted in their response to Plaintiffs' emergency motion for injunctive relief, virtually all the fraud and irregularities alleged by Plaintiffs to have occurred in the City of Detroit or elsewhere were already at issue in pending

state cases, and had been explained and/or rejected by the courts. (ECF No. 31, Defs Resp, PageID.2162, 2173, 2191-2203; *see also* ECF No. 31-2, PageID.2232; ECF No. 31-3, PageID.2244; ECF No. 31-7, PageID.2268; ECF No. 31-8, PageID.2323; ECF No. 31-10, PageID.2349; ECF No. 31-13, PageID.2410; ECF No. 31-15, PageID.2438; ECF No. 31-16, PageID.2452.) The City of Detroit's brief in support of its motion for sanctions fully details this point, (ECF No. 78, Detroit Rule 11 Brf, PageID.3644-3649), and Defendants incorporate that argument herein. Plaintiffs knew this as they incorporated and relied on some of the same affidavits filed in the state-court cases. (See, e.g., ECF No. 6, Amend. Compl., PageID.898; ECF No. 6-4; ECF No. 6-6.) And, as noted by the Court, many of these affidavits were based on "beliefs" and speculation, not evidence. (ECF No. 62, Op. & Order, PageID.3326-3328.)

Plaintiffs also supported various factual allegations concerning Michigan's election results with alleged "expert" affidavits or reports. (See, e.g., ECF No. 6, Amend. Compl.; ECF No. 6-1; ECF No. 6-21; ECF No. 6-22; ECF No. 6-23; ECF No. 6-24; ECF No. 6-25; ECF No. 6-26; ECF No. 6-29.) But as the City of Detroit sets forth persuasively in its brief, these submissions were lacking in credibility for numerous reasons, including the reliance on lies or misapplication or misunderstanding of Michigan Election Law and the election results. (ECF No. 78, Detroit Rule 11 Brf, PageID.3649-3658.) Defendants incorporate that

argument herein as well. It is plain from the record that Plaintiffs' counsel knew or should have known that the factual bases for their claims were frivolous.

And finally, there is the issue of Plaintiffs' counsels' tactics in this case. Plaintiffs filed this case minutes before Midnight the day before the Thanksgiving Holiday weekend, and then filed the amended complaint with its 900 pages of attachments and their emergency motions on Sunday, November 29. Plaintiffs' requested relief before December 8. Plaintiffs could not have reasonably believed that Defendants Whitmer, Benson, and the Board would have any meaningful opportunity to review these filings, including the alleged "expert" filings, and retain any experts of their own. And indeed, Defendants did not as they were required to respond by December 2. And when Plaintiffs lost their emergency motion, they quickly appealed to the Sixth Circuit, but then did nothing in that court. Instead taking the unusual step of filing a petition for certiorari in the Supreme Court in which they admitted their case would be moot once Michigan's electors voted on December 14.

But when that day came and went with no relief from the Supreme Court, Plaintiffs took no steps to dismiss this case. As a result, Defendants were required to respond to the amended complaint by filing a motion to dismiss on December 22. Plaintiffs' counsel took the incorrect position that Defendants could not move to dismiss because of the pending appeals. Subsequently, Congress convened on

January 6 and 7, accepted Michigan's electoral votes and declared Mr. Biden the new President. But still Plaintiffs took no steps to dismiss any part of this case. On January 12, Plaintiffs' counsel requested an extension for responding to the motions to dismiss, which was denied for the most part, and then turned around and filed a voluntary dismissal as to Defendants on January 14. The voluntary dismissals contained nothing of substance and plainly could have been filed days if not weeks earlier. Notably, earlier in the day on the fourteenth, because Plaintiffs had not taken steps to dismiss this suit, the undersigned counsel had to respond to Plaintiffs' petition for certiorari in the Supreme Court. And although Plaintiffs' counsel has now dismissed the Sixth Circuit appeal, they have taken no steps to apprise the Supreme Court of these events.

Plaintiffs' pleadings and the way they have litigated this case leads inevitably to a conclusion that this matter was filed for an improper purpose. This Court recognized as much, stating in its December 7 opinion that "this lawsuit seems to be less about achieving the relief Plaintiffs seek—as much of that relief is beyond the power of this Court—and more about the impact of their allegations on People's faith in the democratic process and their trust in our government." (ECF No. 62, Op. & Order, PageID.3329-3330.) It was never about winning on the merits of Plaintiffs' claims. Rather, this lawsuit was another attempt by Trump loyalists to sow doubt in the integrity of Michigan's presidential election results,

just as the former President's supporters attempted to do in other "swing" states. Their purpose was to provide like-minded government officials, whether state legislators, Congress, or executive branch members, a basis upon which to advocate for the rejection of Michigan's electoral vote. While this effort was unsuccessful, the terrible by-product of Plaintiffs' and their counsels' efforts is reflected in the January 6 insurrection at our Nation's Capital.

As Judge Boasberg of the D.C. Circuit stated in another lawsuit challenging the election in Michigan and other swing states, "[c]ourts are not instruments through which parties engage in [ ] gamesmanship or symbolic political gestures." (Ex. C, 1/4/21 Opinion, *Wisconsin Voters Alliance, et al v. Vice President Michael R. Pence, et al*.) But that is precisely what Plaintiffs and their counsel have done here. This Court should therefore exercise its inherent authority and impose sanctions against Plaintiffs' counsel.

### C. This Court should award attorneys' fees to the Michigan Department of Attorney General.

Defendants Whitmer and Benson request that this Court award the Department of Attorney General $11,071.00 in attorneys' fees as a sanction for the reasons stated above.[21] The undersigned counsel, Assistant Attorneys General

[21] Attorney's fees are available under § 1927, regardless of whether a party is represented by private counsel or the government. *See, e.g., Ridder*, 109 F.3d at 298-99; *United States v. Perfecto*, No. 1:06-cr-20387-JDB-2, 2010 WL 11602757, at *2 (W.D. Tenn. July 21, 2010) (denying a motion to set aside costs that had

(AAGs) Meingast and Grill, have attached declarations in support of the request for fees. (Ex. D, Meingast Dec; Ex. E, Grill Dec.) While this case has not required the filing of numerous pleadings by defense counsel, given the length and complexity of Plaintiffs' filings, the novel claims and unprecedented relief requested, the case has involved significant review, research, and drafting.

Plaintiffs' November 25 complaint was 211 paragraphs long, and the total filing consisted of 830 pages, which included numerous exhibits for which no separate index or description was provided. (ECF No. 1, PageID.1-830.) Plaintiffs' amended complaint, filed November 29, was 233 paragraphs long, and the filing consisted of 960 pages. (ECF No. 6, Amend. Compl., PageID.872-1831.) Again, there were numerous exhibits with no index and no tabs or markings. *Id.* On the same day, Plaintiffs filed their emergency motion for declaratory and injunctive relief, which mercifully, if not surprisingly, was only 16 pages long. (ECF No. 7, Plfs Mot, PageID.1832.) These filings required significant review by defense counsel, which was exacerbated by Plaintiffs' disorganized filings.

Plaintiffs' unique Electors Clause and Elections Clause claims required research, along with the vote dilution and substantive due process claims. The

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previously been awarded to the government); *Parrish v. Bennett,* No. 3:20-CV-275, 2020 WL 7641185, at *5 (M.D. Tenn. Dec. 23, 2020).

many deficiencies presented in Plaintiffs' filing required research on defenses, like standing, abstention, and the Eleventh Amendment. And given the short time frame Defendants were afforded for responding to Plaintiffs' motion, it was necessary for both undersigned counsel to work on the response and divide tasks. Defendants' response was 55 pages long and included over 200 pages in exhibits. (ECF No. 31, Defs Resp, PageID.2162-2458.) The deficiencies in Plaintiffs' legal and factual claims raised numerous issues and defenses, and constitutional claims almost always require more full and complex analysis. And in the end, this Court agreed, in some manner, with every single argument raised in Defendants' response in its December 7 opinion and order. (ECF No. 62, Op. & Order.)

As discussed above, Defendants, through the undersigned counsel, were required to file a first responsive pleading to the amended complaint. Defendants filed a motion to dismiss in lieu of an answer. (ECF No. 70, Defs Mot & Brf to Dismiss, PageID.3350-3427.) And while much of the research and drafting for this motion could be taken from Defendants' prior response, the motion and brief still required defense counsel to incorporate the Court's December 7 opinion and order, modify the legal arguments, and update other areas of the brief. This motion and brief were 62 pages in length.

In addition to these filings, defense counsel performed other small tasks, such as responding to the motion to seal, communicating with clients, and

reviewing the City of Detroit's motion for sanctions and filing a concurrence in that motion, which were necessary and reasonable under the circumstances.

The undersigned counsel have practiced for 23 years (AAG Meingast) and 19 years (AAG Grill), respectively, and are senior attorneys within the Department of Attorney General. Both have significant experience in litigating election cases in state and federal court. An hourly rate for AAG Meingast of $395 and an hourly rate of $375 for AAG Grill is reasonable in light of their experience and is consistent with the rates charged by election attorneys practicing in the Lansing area.[22]

Based on the above, Defendants request $11,071.00 in attorneys' fees be awarded to the Michigan Department of Attorney General.

## CONCLUSION AND RELIEF REQUESTED

For all of the reasons discussed above, Defendants Governor Gretchen Whitmer and Secretary of State Jocelyn Benson respectfully request that this Honorable Court enter an Order granting their motion for sanctions under 28 U.S.C. § 1927 or the Court's inherent authority, and award attorneys' fees in the amount of $11,071.00 to the Michigan Department of Attorney General.

[22] *See* State Bar of Michigan's 2020 Economics of Law Practice in Michigan Survey, p 55, https://www.michbar.org/file/pmrc/articles/0000156.pdf, (accessed January 28, 2021.)

Respectfully submitted,

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Dated: January 28, 2021

**CERTIFICATE OF SERVICE**

I hereby certify that on January 28, 2021, I electronically filed the above document(s) with the Clerk of the Court using the ECF System, which will provide electronic copies to counsel of record.

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

TIMOTHY KING, MARIAN ELLEN SHERIDAN, JOHN EARL HAGGARD, CHARLES JAMES RITCHARD, JAMES DAVID HOOPER, and DARREN WADE RUBINGH,

Plaintiffs,

v

GRETCHEN WHITMER, in her official capacity as Governor of the State of Michigan, JOCELYN BENSON, in her official capacity as Michigan Secretary of State and the Michigan BOARD OF STATE CANVASSERS,

Defendants,

CITY OF DETROIT,
Intervening Defendant,

ROBERT DAVIS,
Intervening Defendant,

DEMOCRATIC NATIONAL COMMITTEE and MICHIGAN DEMOCRATIC PARTY,

Intervening Defendant.

No. 2-20-cv-13134

HON. LINDA V. PARKER

MAG. R. STEVEN WHALEN

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**DEFENDANTS WHITMER AND BENSON'S MOTION FOR SANCTIONS UNDER 28 U.S.C. § 1927**

**EXHIBIT LIST**

A. Plaintiffs' Petition for Writ of Certiorari
B. Email dated 12.22.2020

C. *Wisconsin Voters v Pence, et al*
D. Declaration of Heather S. Meingast
E. Declaration of Erik A. Grill

# EXHIBIT A

CASE NO.

IN THE SUPREME COURT OF THE UNITED STATES

IN RE: TIMOTHY KING, MARIAN ELLEN SHERIDAN, JOHN EARL HAGGARD, CHARLES JAMES RITCHARD, JAMES DAVID HOOPER and DAREN WADE RUBINGH,

Plaintiffs/Petitioners.

**PETITION FOR WRIT OF CERTIORARI PURSUANT TO 28 U.S.C. § 1651(a), On Petition for a Writ of Certiorari to the United States Federal District Court for the Eastern District of Michigan**

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ISSUES PRESENTED

I. THE TRIAL COURT ERRED WHEN IT DENIED THE PETITIONERS' EMERGENCY MOTION WITOUT EVEN A HEARING OR ORAL ARGUMENT FOR DECLARATORY, EMERGENCY, AND PERMANENT INJUNCTIVE RELIEF WHEN THE PETITIONERS HAD PRESENTED A PRIMA FACIE CASE SETTING FORTH CLAIMS OF WIDESPREAD VOTER IRREGULARITIES AND FRAUD IN THE STATE OF MICHIGAN IN THE PROCESSING AND TABULATION OF VOTES AND ABSENTEE BALLOT. THE TRIAL COURT COMPLETELY AND UTTERLY IGNORGED THE DOZENS OF AFFIDAVITS, TESTIMONIALS, EXPERT OPINIONS, DIAGRAMS AND PHOTOS THAT SUPPORTED THE PETITIONERS' CLAIM SEEKING AN INJUNCTION OF THE VOTING PROCESS.

A. WHETHER THE PETITIONERS HAVE PRESENTED SUFFICIENT EVIDENCE TO SUPPORT THREE CLAIMS PURSUANT TO 42 USC§ 1983: (Count I) VIOLATION OF THE ELECTIONS AND ELECTORS CLAUSES; (Count II) VIOLATION OF THE FOURTEEN AMENDMENT EQUAL PROTECTION CLAUSE AND (Count III) DENIAL OF THE FOURTEENTH AMENDMENT DUE PROCESS CLAUSE AND A VIOLATION OF THE MICHIGAN ELECTION CODE?

B. WHETHER THE PETITIONERS PRESENTED SUFFICIENT EVIDENCE WHICH WAS IGNORED BY THE DISTRICT TO WARRANT A PRELIMINARY INJUNCTION WHERE THE PROFFERED EVIDENCE ESTALBLISHED LIKEHOOD OF SUCCESS ON THE MERITS, THAT THE PETITIONERS WOULD SUFFER IRREPARABLE HARM IN THE ABSENCE OF PRELIMINARY RELIEF AND THAT THE BALANCE OF EQUITIES TIPS IN THIE FAVOR AND THAT AN INJUNCTION IS IN THE PUBLIC INTEREST?

II. WHETHER THE DISTRICT COURT ERRED WHEN IT DISMISSED THE PETITIONERS EMERGENCY MOTION AND REQUEST FOR PRELIMINARY INJUNCTION WHEN THE COURT HELD THAT THE PETITIONERS STATE LAW CLAIMS AGAINST RESPONDENTS WERE BARRED BY ELEMENTH AMENDMENT IMMUNITY?

III. WHETHER THE DISTRICT COURT ERREONEOUSLY HELD THAT THE PETITIONERS CLAIMS SEEKING A PRELIMINARY INJUNCTION WERE BARRED AS BEING MOOT WHEN THE ELECTORAL COLLEGE HAS YET TO CERTIFY THE NATIONAL ELECTION AND AS SUCH THE RELIEF REQUESTED IS TIMELY?

IV. WHETHER THE DISTRICT COURT ERRED WHEN IT HELD THAT THE PETITIONERS CLAIMS WERE BARRED BY THE DOCTRINE OF LACHES WHEN THE CLAIMS WERE IN FACT TIMELY MADE AND ARE ADDRESSING HARM THAT IS CONTINUING AND FORTHCOMING AND THE RESPONDENTS ARE NOT PREJUDICIED BY ANY DELAYS IN THE FILING BY THE PETITIONERS?

V. WHETHER THE DISTRICT COURT ERRED WHEN IT DISMISSED THE PETITIONERS CLAIMS BASED ON THE ABSTENTION DOCTRINE IDENTIFIED IN THE US SUPREME COURT CASE OF COLORADO RIVER WITHOUT ANY SHOWING OF PARALLEL STATE COURT PROCEEDINGS THAT ADDRESS THE IDENTICAL RELIEF SOUGHT?

VI. WHETHER THE DISTRICT COURT ERRED WHEN IT FOUND THAT THE PETITIONERS FAILED TO SHOW THAT THEIR INJURY CAN BE REDRESSED BY THE RELIEF SOUGHT AND HELD THAT THE PETITIONERS POSSESS NO STANDING TO PURSUE THEIR EQUAL PROTECTION CLAIM WHEN GIVEN THE EVIDENCE PRESENTED AND THE RELIEF SOUGHT, THE ISSUE OF VOTER FRAUD AND VALIDATION OF ELECTION IS THE VERY RELIEF THAT A COURT CAN REDRESS PURSUANT TO THE EQUAL PROTECTION AND THE PETITIONERS CLEARLY HAVE STANDING?

VII. WHETHER THE DISTRICT COURT ERRED WHEN IT FOUND THAT PETITIONERS CLAIMS WERE BARRED BECAUSE THE COURT DETERMINED THE PETITIONERS "ASSERT NO PARTICULARIZED STAKE IN THE LITIGATION" AND FAILED TO ESTABLISH AN INJURY-IN-FACT AND THUS LACK STANDING TO BRING THEIR ELECTIONS CLAUSE AND ELECTORS CLAUSE CLAIMS WHEN THE PETITIONERS ARE THE VERY INDIVIDUALS WHO CAN ASSERT THIS CLAIM AND HAVE PROPER STANDING TO DO SO?

PARTIES TO THE PROCEEDINGS AND STANDING

All parties appear in the caption of the case on the cover page.

Each of the following Plaintiffs/Petitioners are registered Michigan voters and nominees of the Republican Party to be a Presidential Elector on behalf of the State of Michigan: Timothy King, a resident of Washtenaw County, Michigan; Marian Ellen Sheridan, a resident of Oakland County, Michigan; and, John Earl Haggard, a resident of Charlevoix, Michigan;

Each of these Plaintiffs/Petitioners has standing to bring this action as voters and as candidates for the office of Elector under MCL §§ 168.42 & 168.43 (election procedures for Michigan electors).As such, Presidential Electors "have a cognizable interest in ensuring that the final vote tally reflects the legally valid votes cast," as "[a]n inaccurate vote tally is a concrete and particularized injury to candidates such as the Electors." Carson v. Simon, 978 F.3d 1051, 1057 (8th Cir. 2020) (affirming that Presidential Electors have Article III and prudential standing to challenge actions of Secretary of State in implementing or modifying State election laws); see also McPherson v. Blacker, 146 U.S. 1, 27 (1892); Bush v. Palm Beach Cty. Canvassing Bd., 531 U.S. 70, 76 (2000) (per curiam). Each brings this action to set aside and decertify the election results for the Office of President of the United States that was certified by the Michigan Secretary of State on November 23, 2020. The certified results showed a plurality of 154,188 votes in favor of former Vice-President Joe Biden over President Trump.

Petitioner James Ritchard is a registered voter residing in Oceana County. He is the Republican Party Chairman of Oceana County. Petitioner James David Hooper is a registered voter residing in Wayne County. He is the Republican Party Chairman for the Wayne County Eleventh District. Petitioner Daren Wade Ribingh is a registered voter residing in Antrim County. He is the Republican Party Chairman of Antrim County.

Respondent Gretchen Whitmer (Governor of Michigan) is named herein in her official capacity as Governor of the State of Michigan. Respondent Jocelyn Benson ("Secretary Benson") is named as a defendant/respondent in her official capacity as Michigan's Secretary of State. Jocelyn Benson is the "chief elections officer" responsible for overseeing the conduct of Michigan elections. Respondent Michigan Board of State Canvassers is "responsible for approv[ing] voting equipment for use in the state, certify[ing] the result of elections held statewide…." Michigan Election Officials' Manual, p. 4. See also MCL 168.841, etseq. On March 23, 2020, the Board of State Canvassers certified the results of the 2020 election finding that Joe Biden had received 154,188 more votes than President Donald Trump.

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**STATUTES, RULES, CONSTITUTIONAL CITATIONS**

CORPORATE DISCLOSURE STATEMENT

Pursuant to Supreme Court Rule 29.6, the Petitioners herein disclose the following: There is no parent or publicly held company owning 10% or more of Respondent's stock or corporate interest.

## INTRODUCTION

Petitioners file this motion seeking immediate relief in anticipation of their petition for certiorari from the judgment of the District Court dated December 7, 2020, dismissing their case after denying their motion for a Temporary Restraining Order. (R.62). Petitioners filed a notice of appeal to the Sixth Circuit on December 8, 2020. (R.64). Because of the exigencies of time, they have not presented their case to the Sixth Circuit but, rather, will seek certiorari before judgment in the court of appeals pursuant to S. Ct. R. 11. This motion for immediate preliminary relief seeks to maintain the status quo so that the passage of time and the actions of Respondents do not render the case moot, depriving this Court of the opportunity to resolve the weighty issues presented herein and Respondents of any possibility of obtaining meaningful relief.

Petitioners seek review of the district court's order denying any meaningful consideration of credible allegations of massive election fraud, multiple violations of the Michigan Election Code, see, e.g., MCL §§ 168.730-738 and Equal Protection Clause of the U.S. Constitution that occurred during the 2020 General Election throughout the State of Michigan. Petitioners presented substantial evidence consisting of sworn declarations of dozens of eyewitnesses and of experts identifying statistical anomalies and mathematical impossibilities, as well as a multistate, conspiracy, facilitated by foreign actors, including China and Iran, designed to deprive Petitioners to their rights to a fair and lawful election. The district court ignored it all. It failed to hear from a single witness or consider any expert and made findings without any examination of the record.

The scheme and artifice to defraud illegally and fraudulently manipulate the vote count to manufacture the "election" of Joe Biden as President of the United States. The fraud was executed by many means, but the most fundamentally troubling, insidious, and egregious ploy was the systemic adaptation of old-fashioned "ballot-stuffing." It has now been amplified and rendered virtually invisible by computer software created and run the vote tabulation by domestic and foreign actors for that very purpose. The petition detailed an especially egregious range of conduct in Wayne County and the City of Detroit, though this conduct occurred throughout the State with the cooperation and control of Michigan state election officials, including Respondents.

The multifaceted schemes and artifices to defraud implemented by Respondents and their collaborators resulted in the unlawful counting, or outright manufacturing, of hundreds of thousands of illegal, ineligible, duplicate, or purely fictitious ballots in Michigan. The same pattern of election fraud and vote-counting fraud writ large occurred in all the swing states with only minor variations in Michigan, Pennsylvania, Arizona, and Wisconsin. See Ex. 101, William M. Briggs, Ph.D. "An Analysis Regarding Absentee Ballots Across Several States" (Nov. 23, 2020) ("Dr. Briggs Report"). Unlike some other petitions currently pending, this case presented an enormous amount of evidence in sworn statements and expert reports. According to the final certified tally in Michigan, Mr. Biden had a slim margin of 146,000 votes.

The election software and hardware from Dominion Voting Systems ("Dominion") used by the Michigan Board of State Canvassers was created to achieve election fraud. See Ex. 1, Redacted Declaration of

Dominion Venezuela Whistleblower ("Dominion Whistleblower Report"). The Dominion systems derive from the software designed by Smartmatic Corporation, which became Sequoia in the United States.

The trial court did not examine or even comment on Petitioners' expert witnesses, including Russell James Ramsland, Jr. (Ex. 101, "Ramsland Affidavit"), who testified that Dominion alone is responsible for the injection, or fabrication, of 289,866 illegal votes in Michigan. This is almost twice the number of Mr. Biden's purported lead in the Michigan vote (without consideration of the additional illegal, ineligible, duplicate or fictitious votes due to the unlawful conduct outlined below). This, by itself, requires that the district court grant the declaratory and injunctive relief Petitioners sought. Andrew W. Appel, et al., "Ballot Marking Devices (BMDs) Cannot Assure the Will of the Voters" at (Dec. 27, 2019), attached hereto as Exhibit 2 ("Appel Study").

In addition to the Dominion computer fraud, Petitioners identified multiple means of "traditional" voting fraud and Michigan Election Code violations, supplemented by harassment, intimidation, discrimination, abuse, and even physical removal of Republican poll challengers to eliminate any semblance of transparency, objectivity, or fairness from the vote counting process. Systematic violations of the Michigan Election Code cast significant doubt on the results of the election and call for this Court to set aside the 2020 Michigan General Election and grant the declaratory and injunctive relief requested herein. King Et al vs. Whitmer Et al, No. 20-cv-13134, Eastern District of Michigan, Exhibits 1-43, PgID 958-1831.

## OPINION BELOW

Judge Linda Parker, in the Eastern District of Michigan, without an evidentiary hearing or even oral argument, denied Petitioners "Emergency Motion for Declaratory, Emergency, and Permanent Injunctive Relief." The court held the Eleventh Amendment bars Petitioners claims against Respondents (R, 62, PgID, 3307); Petitioners claims for relief concerning the 2020 General Election were moot (R, 62, PgID, 3310); Petitioners claims were barred by laches as a result of "delay" (R,62, PgID, 3313); and abstention is appropriate under the *Colorado River* doctrine; (R, 62, PgID 3317). The Court further held that petitioners lacked standing. (R, 62, PgID 3324).

The Court stated, "it appears that Petitioners' claims are in fact state law claims disguised as federal claims" (R, 62, PgID 3324) and held there was no established equal protection claim (R, 62, PgID 3324). The Court declined to discuss the remaining preliminary injunction factors extensively. (R, 62, PgID, 3329). Opinion and Order Attached Denying Petitioner's' Emergency Motion for Declaratory, Emergency, and Permanent Injunctive Relief. (R. 62).

## JURISDICTION

The district Court had subject matter over these federal questions under 28 U.S.C. § 1331 because it presents numerous claims based on federal law and the U.S. Constitution. The district court also has subject matter jurisdiction under 28 U.S.C. § 1343 because this action involves a federal election for President of the United States. "A significant departure from the legislative scheme for appointing Presidential

electors presents a federal constitutional question." Bush v. Gore, 531 U.S. 98, 113 (2000) (Rehnquist, C.J., concurring); Smiley v. Holm, 285 U.S. 355, 365(1932).

The district court had authority to grant declaratory relief under 28 U.S.C. §§ 2201and 2202 and by Fed. R. Civ. P. 5 7 . The district court had supplemental jurisdiction over the related Michigan constitutional claims and state-law claims under 28 U.S.C.§ 1367.

This Court has jurisdiction under 28 USC § 1254(1) because the case is in the Court of Appeals for the Sixth Circuit and petitioners are parties in the case. This Court should grant certiorari before judgment in the Court of Appeals pursuant to Supreme Court Rule 11 because "the case is of such imperative public importance as to justify deviation from normal appellate practice and to require immediate determination in this Court." The United States Constitution reserves for state legislatures the power to set the time, place, and manner of holding elections for Congress and the President, state executive officers, including but not limited to Secretary Benson, have no authority to unilaterally exercise that power, much less flout existing legislation. Moreover, Petitioners Timothy King, Marian Ellen Sheridan, John Earl Haggard, Charles James Ritchard, James David Hooper, and Daren Wade Rubingh, are candidates for the office of Presidential Electors who have a direct and personal stake in the outcome of the election and are therefore entitled to challenge the manner in which the election was conducted and the votes tabulated under the authority of this Court's decision in *Bush v. Gore*, 531 U.S. 98 (2000).

Additionally, this Court has jurisdiction pursuant to the All Writs Act, 28 U.S.C. § 1651(a) and United States Supreme Court Rule 20, Procedure on a Petition for an Extraordinary Writ. Petitioners will suffer irreparable harm if they do not obtain immediate relief. The Electors are set to vote on December 14, 2020. The issues raised are weighty as they call into question who is the legitimate winner of the 2020 presidential election. These exceptional circumstances warrant the exercise of the Court's discretionary powers, particularly as this case will supplement the Court's understanding of a related pending case, State of Texas v. Commonwealth of Pennsylvania et al, S.Ct. Case No. 220155.

The All Writs Act authorizes an individual Justice or the full Court to issue an injunction when (1) the circumstances presented are "critical and exigent"; (2) the legal rights at issue are "indisputably clear"; and (3) injunctive relief is "necessary or appropriate in aid of the Court's jurisdiction." *Ohio Citizens for Responsible Energy, Inc. v. NRC*, 479 U.S. 1312 (1986) (Scalia, J., in chambers) (citations and alterations omitted).

A submission directly to this Court for a Writ of Certiorari, a Stay of Proceeding and a Preliminary Injunction is an extraordinary request, but it has its foundation. While such relief is rare, this Court will grant it "where a question of public importance is involved, or where the question is of such a nature that it is peculiarly appropriate that such action by this Court should be taken." *Ex Parte Peru*, 318 U.S. 578, 585 (1943). *See also* Cheney v. U.S. Dist. Court, 542 U.S. 367, 380–81 (2004).

Here, Petitioners and the public will suffer irreparable harm if this Court does not act without delay. Once the electoral votes are cast, subsequent relief would be pointless. In *Federal Trade Commission v. Dean Foods Co.*, 384 U.S. 597 (1966), the Court affirmed the Seventh Circuit, finding authority under 28 U.S.C. § 1651(a) to enjoin merger violating Clayton Act, where the statute itself was silent on whether injunctive relief was available regarding an application by the FTC. "These decisions furnish ample precedent to support jurisdiction of the Court of Appeals to issue a preliminary injunction preventing the consummation of this agreement upon a showing that an effective remedial order, once the merger was implemented, would otherwise be virtually impossible, thus rendering the enforcement of any final decree of divestiture futile." *Id.* at 1743. This Court rendered a similar decision in *Roche v. Evaporated Milk Assn*, 319 U.S. 21 (1943), granting a writ of mandamus, even though there was no appealable order and no appeal had been perfected because "[o]therwise the appellate jurisdiction could be defeated and the purpose of the statute authorizing the writ thwarted by unauthorized action of the district court obstructing the appeal."

CONSTITUTIONAL AND STATUTORY PROVISIONS

The Fourteenth Amendment of the United States Constitution provides "nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

The Electors Clause states that "[e]ach State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors" for president. U.S. Const. art. II, §1, cl. 2.

The Elections Clause states: "The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators." U.S. Const. art. I, §4, cl. 1.

The Constitution of Michigan, Article II, § 4, clause 1(h) states: "The right to have the results of statewide elections audited, in such a manner as prescribed by law, to ensure the accuracy and integrity of elections. All rights set forth in this subsection shall be self-executing. This subsection shall be liberally construed in favor of voters' rights in order to effectuate its purposes."

The Michigan Election Code provides voting procedures and rules for the State of Michigan. M.C.L. § 168.730, designation, qualifications, and number of challengers, M.C.L. § 168.733,challengers, space in polling place, rights, space at counting board, expulsion for cause, protection, threat or intimidation, MCL § 168.31(1)(a) Secretary of state, duties as to elections, rule MCL 168.765a absent voter counting board.

STATEMENT OF THE CASE

Petitioners brought this case to vindicate their constitutional right to a free and fair election ensuring the accuracy and integrity of the process pursuant to the Michigan Constitution, art. 2, sec. 4, par. 1(h), which states all Michigan citizens have: "The right to have the results of statewide elections audited, in such a manner as prescribed by law, to ensure the accuracy and integrity of elections."

The Mich. Const., art.2, sec.4, par. 1(h) further states, "All rights set forth in this subsection shall be self-executing. This subsection shall be liberally construed in favor of voters' rights in order to effectuate its purposes."

These state-law procedures, in turn, implicate Petitioners' rights under federal law and the U.S. Constitution. "When the state legislature vests the right to vote for President in its people, the right to vote as the legislature has prescribed is fundamental; and one source of its fundamental nature lies in the equal weight accorded to each vote and the equal dignity owed to each voter." *Bush v. Gore*, 531 U.S. at 104. "[I]n the context of a Presidential election, state-imposed restrictions implicate a uniquely important national interest. For the President and the Vice President of the United States are the only elected officials who represent all the voters in the Nation." *Anderson* v. *Celebrezze*, 460 U.S. 780, 794-795 (1983) (footnote omitted).

Based upon all the allegations of fraud, statutory violations, and other misconduct, as stated herein and in the attached affidavits, this Court should exercise its authority to issue the writ of certiorari and stay the vote for the Electors in Michigan.

Fact Witness Testimony of Voting Fraud & Other Illegal Conduct

Respondents and their collaborators have executed a multifaceted scheme to defraud Michigan voters, resulting in the *unlawful counting of hundreds of thousands* of illegal, ineligible, duplicate or purely fictitious ballots in the State of Michigan. Evidence included in Respondents' complaint and reflected in Section IV herein shows with specificity the minimum number of ballots that should be discounted, which is more than sufficient to overturn and reverse the certified election results. This evidence, provided in the form of dozens of affidavits and reports from fact and expert witnesses, further shows that the entire process in Michigan was so riddled with fraud and illegality that certified results cannot be relied upon for any purpose by anyone involved in the electoral system.

There were three broad categories of illegal conduct by election workers in collaboration with other state, county and/or city employees and Democratic poll watchers and activists.

*First*, election workers illegally forged, added, removed or otherwise altered information on ballots, the Qualified Voter File (QVF) and Other Voting Records, including:

A. Fraudulently adding "tens of thousands" of new ballots and/or new voters to QVF in two separate batches on November 4, 2020, all or nearly all of which were votes for Joe Biden.

B. Forging voter information and fraudulently adding new voters to the QVF Voters, in particular, e.g., when a voter's name could not be found, the election worker assigned the ballot to a random name already in the QVF to a person who had not voted and recorded these new voters as having a birthdate of 1/1/1900.

C. Changing dates on absentee ballots received after the 8:00 PM Election Day deadline to indicate that such ballots were received before the deadline.

D. Changing votes for Trump and other Republican candidates.

E. Adding votes to "undervote" ballots and removing votes from "overvote" ballots.[1]

*Second*, to facilitate and cover up the voting fraud and counting of fraudulent, illegal or ineligible voters, election workers:

A. Denied Republican election challengers' access to the TCF Center, where all Wayne County, Michigan ballots were processed and counted.

B. Denied Republic poll watchers at the TCF Center meaningful access to view ballot handling, processing, or counting, and locked credentialed challengers out of the counting room so they could not observe the process, during which time tens of thousands of ballots were processed.

[1] As explained in *Bush v. Gore*, "overvote" ballots are those where "the [voting] machines had failed to detect a vote for President," 531 U.S. at 102, while "overvote" ballots are those "which contain more than one" vote for President. *Id.* at 107.

C. Engaged in a systematic pattern of harassment, intimidation and even physical removal of Republican election challengers or locking them out of the TCF Center.

D. Systematically discriminated against Republican poll watchers and favored Democratic poll watchers.

E. Ignored or refused to record Republican challenges to the violations outlined herein.

F. Refused to permit Republican poll challengers to observe ballot duplication and other instances where they allowed ballots to be duplicated by hand without allowing poll challengers to check if the duplication was accurate.

G. Unlawfully coached voters to vote for Joe Biden and to vote a straight Democrat ballot, including by going over to the voting booths with voters in order to watch them vote and coach them for whom to vote. As a result, Democratic election challengers outnumbered Republicans by 2:1 or 3:1 (or sometimes 2:0 at voting machines).

H. Collaborated with Michigan State, Wayne County and/or City of Detroit employees (including police) in all of the above unlawful and discriminatory behavior.

*Third*, election workers in some counties committed several additional categories of violations of the Michigan Election Code to enable them to accept and count other illegal, ineligible or duplicate ballots, or reject Trump or Republican ballots, including:

A. Permitting illegal double voting by persons that had voted by absentee ballot and in person.

B. Counting ineligible ballots – and in many cases – multiple times.

C. Counting ballots without signatures, or without attempting to match signatures, and ballots without postmarks, pursuant to direct instructions from Respondents.

D. Counting "spoiled" ballots.

E. Systematically violating of ballot secrecy requirements.

F. Counted unsecured ballots that arrived at the TCF Center loading garage, not in sealed ballot boxes, without any chain of custody, and without envelopes, after the 8:00 PM Election Day deadline, in particular, tens of thousands of ballots that arrived on November 4, 2020.

G. Accepting and counting ballots from deceased voters.

Expert Witness Testimony Regarding Voting Fraud

In addition to the above fact witnesses, this Complaint presented expert witness testimony demonstrating that several hundred thousand illegal, ineligible, duplicate or purely fictitious votes must be thrown out, in particular:

(1) A report from Russel Ramsland, Jr. showing the "physical impossibility" of nearly 385,000 votes tabulated by four precincts on November 4, 2020 in two hours and thirty-eight minutes, that derived from the processing of nearly 290,000 more ballots than available machine counting capacity (which is based on statistical analysis that is independent of his analysis of Dominion's flaws).

(2) A report from Dr. William Briggs, showing that there were approximately 60,000 absentee ballots listed as "unreturned" by voters that either never requested them, or that requested and returned their ballots.

(3) A report from Dr. Eric Quinell analyzing the anomalous turnout figures in Wayne and Oakland Counties showing that Biden gained nearly 100%, and frequently more than 100%, of all "new" voters in certain townships/precincts over 2016, and thus indicated that nearly 87,000 anomalous and likely fraudulent votes were accepted and tabulated from these precincts.

Foreign actors interfered in this election. As explained in the accompanying redacted declaration of a former electronic intelligence analyst who served in the 305th Military Intelligence Unit with experience gathering SAM missile system electronic intelligence, the Dominion software was accessed by agents acting on behalf of China and Iran in order to monitor and manipulate elections, including the most recent U.S. general election in 2020. This Declaration further includes a copy of the patent records for Dominion Systems in which Eric Coomer, Dominion's security director, is listed as the first of the inventors of Dominion Voting Systems. (See Attached hereto as Ex. 105, copy of redacted witness affidavit, November 23, 2020).

Another expert explains that U.S. intelligence services had developed tools to infiltrate foreign voting systems, including Dominion. He states that Dominion's software is vulnerable to data manipulation by unauthorized means and permitted election data to be altered in all battleground states. He concludes that hundreds of thousands of votes that were cast for President Trump in the 2020 general election were probably transferred to former Vice-President Biden. (Ex. 109).

These and other irregularities provide substantial grounds for this Court to stay or set aside the results of the 2020 General Election in Michigan and provide the other declaratory and injunctive relief requested herein.

Irreparable harm will inevitably result for both the public and the Petitioners if the Petitioners were required to delay this Court's review by first seeking relief in the United States Court of Appeals, Sixth Circuit. Once the electoral votes are cast, subsequent relief would be pointless and the petition would be moot. As such, petitioners are requesting this Honorable Court grant the petition under the most extraordinary of circumstances. A request which, although rare, is not without precedent.

Similar relief was granted in FTC v. Dean Foods Co., 86 S.Ct. 1738 (1966) affirming the Seventh Circuit, involving an application by the FTC and a holding by this Court that found authority under 28 U.S.C. § 1651(a) to enjoin merger violating Clayton Act, where statute itself was silent on whether injunctive relief was available. "These decisions furnish ample precedent to support jurisdiction of the Court of Appeals to issue a preliminary injunction preventing the consummation of this agreement upon a showing that an effective remedial order, once the merger was implemented, would otherwise be virtually impossible, thus rendering the enforcement of any final decree of divestiture futile." *Id.* at 1743. A similar decision was reached in In *Roche Evaporated Milk Ass'n*, 63 S.Ct. 938, 941 (1943), the Supreme Court granted a writ of mandamus where there was no appealable order or where no appeal had been perfected because "[o]therwise the appellate jurisdiction could be defeated and the purpose of the statute authorizing the writ

thwarted by unauthorized action of the district court obstructing the appeal."

For these reasons, this Honorable Court should exercise its authority to review this pending application, to stay the Electoral College Vote pending disposition of the forthcoming petition for writ of certiorari and to allow Petitioners a full and fair opportunity to be heard.

ARGUMENT

**I. THE TRIAL COURT ERRED WHEN IT DENIED THE PETITIONERS' EMERGENCY MOTION BECAUSE PETITIONERS PRESENTED A PRIMA FACIE CASE OF WIDESPREAD VOTER IRREGULARITIES AND FRAUD IN THE STATE OF MICHIGAN IN THE PROCESSING AND TABULATION OF POLLING-PLACE VOTES AND ABSENTEE BALLOTS**.

The record includes overwhelming evidence of widespread systemic election fraud and numerous serious irregularities and mathematical impossibilities not only in the state of Michigan but numerous states utilizing the Dominion system. Sworn witness testimony of "Spider", a former member of the 305th Military Intelligence Unit, explains how Dominion was compromised and infiltrated by agents of hostile nations China and Iran, among others. (R. 49, PgID, 3074). Moreover, expert Russell Ramsland testified that 289,866 ballots must be disregarded as a result of voting machines counting 384,733 votes in two hours and thirty-eight minutes when the actual, available voting machinery was incapable of counting more than 94,867 votes in that time frame. (R. 49, PgID, 3074). According to the final certified tally in Michigan, Mr. Biden has a slim margin of 146,000 votes over President Trump.

In the United States, voting is a sacrament without which this Republic cannot survive. Election integrity and faith in the voting system distinguishes the United States from failed or corrupt nations around the world. Our very freedom and all that Americans hold dear depends on the sanctity of our votes.

Judge Parker issued a Notice of Determination of Motion without Oral Argument (R. 61, PgID, 3294) on this most sensitive and important matter. She ignored voluminous evidence presented by Petitioners proving widespread voter fraud, impossibilities, and irregularities that undermines public confidence in our election system and leaves Americans with no reason to believe their votes counted. It the face of all Petitioners' evidence, it cannot be said that the vote tally from Michigan reflects the will of the people. From abuses of absentee ballots, fraudulent ballots, manufactured ballots, flipped votes, trashed votes, and injected votes, not to mention the Dominion algorithm that shaved votes by a more than 2% margin from Trump and awarded them to Biden, the Michigan results must be decertified, the process of seating electors stayed, and such other and further relief as the Court finds is in the public interest, or the Petitioners show they are entitled.

**A. PETITIONERS PRESENTED SUFFICIENT EVIDENCE, WHICH WAS IGNORED BY THE DISTRICT COURT, TO WARRANT A PRELIMINARY INJUNCTION WHERE THE PROFFERED EVIDENCE ESTABLISHED A LIKELIHOOD OF SUCCESS ON THE MERITS, THAT PETITIONERS WOULD SUFFER IRREPARABLE HARM IN THE ABSENCE OF INTERLOCUTORY RELIEF, THAT THE BALANCE OF EQUITIES TIPS IN THIER FAVOR AND THAT AN INJUNCTION IS IN THE PUBLIC INTEREST.**

Respondents have submitted a number of affidavits, consisting mostly of recycled testimony from ongoing State proceedings, that purport to rebut Plaintiffs' fact witnesses all of which boil down to: (1) they did not see what they thought they saw; (2) maybe they did see what they thought they saw, but it was legal on the authority of the very government officials engaged in or overseeing the unlawful conduct; (3) the illegal conduct described could not have occurred because it is illegal; and/or (4) even if it happened, those were independent criminal acts by public employees over whom State Respondents had no control.

Below are a few examples of State Defendant affiants' non-responsive responses, evasions and circular reasoning, followed by Plaintiff testimony and evidence that remains unrebutted by their testimony.

- **Illegal or Double Counted Absentee Ballots**. Affiant Brater asserts that Plaintiffs' allegation regarding illegal vote counting can be "cursorily dismissed by a review of election data," and asserts that if illegal votes were counted, there would be discrepancies in between the numbers of votes and numbers in poll books. ECF No. 31-3 ¶19. Similarly, Christopher Thomas, asserts that ballots could not, as Plaintiffs allege, see FAC, Carrone Aff., have been counted multiple times because "a mistake like that would be caught very quickly on site," or later by the Wayne County Canvassing Board. ECF No. 39-6 ¶6. Mr. Brater and Mr. Thomas fail to acknowledge that is precisely what happened: The Wayne County Canvassing Board found that over 70% of Detroit Absentee Voting Board ("AVCB") were unbalanced, and that two members of Wayne County Board of Canvassers initially refused to certify results and conditioned certification on a manual recount and answers to questions such as "[w]hy the pollbooks, Qualified Voter Files, and final tallies do not match or balance." FAC ¶¶105-107 & Ex. 11-12 (Affidavits of Wayne County Board of Canvasser Chairperson Monica Palmer and Member William C. Hartmann). Further, Plaintiffs' affiants testified to observing poll workers assigning ballots to different voters than the one named on the ballot. FAC ¶86 & Larsen Aff. Defendants do not address this allegation, leaving it un-rebutted.

- **Illegal Conduct Was Impossible Because It Was Illegal**. Mr. Thomas wins the Begging the Question prize in this round for circular reasoning that "[i]t would have been impossible for any election worker at the TCF Center to count or process a ballot for someone who was not an eligible voter or whose ballot was not received by the 8:00 p.m. deadline on November," and "no ballot could have been backdated," because no ballots received after the deadline "were ever at the TCF Center," nor could the ballot of an ineligible voter been "brought to the TCF Center." ECF No. 39-5 ¶20; id. ¶27. That is because it would have been illegal, you understand. The City of Detroit's absentee voter ballot quality control was so airtight and foolproof that only 70% of their precincts were unbalanced for 2020 General Election, which exceeded the standards for excellence established in the August 2020 primary where 72% of AVCB were unbalanced. FAC Ex. 11 ¶¶7&14.

State Respondents Affiants did not, however, dismiss all of Plaintiff Affiants' claims. Rather, they made key admissions that the conduct alleged did in fact occur, while baldly asserting, without evidence, that this conduct was legal and consistent with Michigan law. Defendants admitted that:

- Election Workers at TCF Center Did Not Match Signatures for Absentee Ballots.

- Election Workers Used Fictional Birthdates for Absentee Voters. ECF No. 39- 5 ¶15. The software made them do it.

Election Workers Altered Dates for Absentee Ballot Envelopes. Mr. Thomas does not dispute Affiant Jacob's testimony that "she was instructed by her supervisor to adjust the mailing date of absentee ballot packages" sent to voters, but asserts this was legal because "[t]he mailing date recorded for absentee ballot packages would have no impact on the rights of the voters and no effect on the processing and counting of absentee votes." This is not a factual assertion but a legal

conclusion—and wrong to boot. Michigan law the Michigan Constitution provides all registered voters the right to request and vote by an absentee ballot without giving a reason. MICH. CONST. art. 2, § 4. M.C.L. § 168.759(3). That statute limits the procedures for requesting an absentee ballot to three specified ways: An application for an absent voter ballot under this section may be made in any of the following ways: By a written request signed by the voter on an absent voter ballot application form provided for that purpose by the clerk of the city or township. Or on a federal postcard application. M.C.L. § 168.759(3) (emphasis added). The Michigan Legislature thus did not include the Secretary of State as a means for distributing absentee ballot applications. *Id*. § 168.759(3)(b). Under the statute's plain language, the Legislature explicitly gave *only local clerks* the power to distribute absentee voter ballot applications. *Id.* Secretary Benson lacked authority to distribute even a single absentee voter ballot application—much less the *millions* of absentee ballot applications Secretary Benson chose to flood across Michigan.

Secretary Benson also violated Michigan law when she launched a program in June 2020 allowing absentee ballots to be requested online, *without* signature verification as expressly required under Michigan law. The Michigan Legislature did not approve or authorize Secretary Benson's unilateral actions. MCL § 168.759(4) states in relevant part: "An applicant for an absent voter ballot shall sign the application. Subject to section 761(2), a clerk or assistant clerk shall not deliver an absent voter ballot to an applicant who does not sign the application." MCL § 168.761(2), in turn, states: "The qualified voter file must be used to determine the genuineness of a signature on an application for an absent voter ballot. Signature comparisons must be made with the digitized signature in the qualified voter file." Nowhere does Michigan Law authorize counting of an absent voter's ballot without verifying the voter's signature.

## II. THE DISTRICT COURT ERRED WHEN IT DISMISSED PETITIONERS' EMERGENCY MOTION AND REQUEST FOR PRELIMINARY INJUNCTION BY HOLDING THAT THE PETITIONERS STATE-LAW CLAIMS AGAINST RESPONDENTS WERE BARRED BY ELEVENTH AMENDMENT IMMUNITY.

The Sixth Circuit recently addressed the scope of Eleventh Amendment sovereign immunity in the election context in *Russell v. Lundergan-Grimes*, 784 F.3d 1037, 1045 (6th Cir. 2015). In *Russell*, the appellate court held that federal courts do in fact have the power to provide injunctive relief where the defendants, "The Secretary of State and members of the State Board of Elections," were, like State Respondents in this case, "empowered with expansive authority to "administer the election laws of the state." *Russell*, 784 F.3d at 1047 (internal quotations omitted).

> The appellate court held that the Eleventh Amendment does not bar"[e]njoining a statewide official under *Young* based on his obligation to enforce a law is appropriate" where the injunctive relief requested sought to enjoin actions (namely, prosecution) that was within the scope of the official's statutory authority." *Id.*

This is precisely what the Petitioners request in the Amended Complaint, namely, equitable and injunctive relief "enjoining Secretary [of State] Benson and Governor Whitmer from transmitting the currently certified election results to the Electoral College." (See ECF No. 6 ¶1). Under *Russell,* the Eleventh Amendment is no bar to this Court granting the requested relief. (R. 49, PgID 3083).

## III. THE DISTRICT COURT ERREONEOUSLY HELD THAT THE PETITIONERS CLAIMS SEEKING A PRELIMINARY INJUNCTION WERE MOOT WHEN THE ELECTORAL COLLEGE HAS YET TO CERTIFY THE NATIONAL ELECTION AND AS SUCH THE RELIEF REQUESTED IS TIMELY.

This Court can grant the primary relief requested by Petitioners – de- certification of Michigan's election results and an injunction prohibiting State Respondents from transmitting the certified results – as discussed below in Section I.E. on abstention. There is also no question that this Court can order other types of declaratory and injunctive relief requested by Petitioners – in particular, impounding Dominion voting machines and software for inspection – nor have State Respondents claimed otherwise. (R. 49, PgID 3082). The District Court erroneously held that the Petitioners claims seeking a preliminary injunction were barred as being moot when the Electoral College has yet to certify the national election and as such the relief is timely.

## IV. THE DISTRICT COURT ERRED WHEN IT HELD THAT THE PETITIONERS' CLAIMS WERE BARRED BY LACHES WHEN THE CLAIMS WERE IN FACT TIMELY MADE AND ADDRESS HARM THAT IS CONTINUING AND FORTHCOMING, AND THE RESPONDENTS ARE NOT PREJUDICIED BY ANY DELAYS IN THE FILING BY THE PETITIONERS.

Laches consists of two elements, neither of which are met here: (1) unreasonable delay in asserting one's rights; and (2) a resulting prejudice to the defending party. *Meade v. Pension Appeals and Review Committee*, 966 F.2d 190, 195 (6th Cir. 1992). The bar is even higher in the voting rights or election context, where Respondents asserting the equitable defense must show that the delay was due to a "deliberate" choice to bypass judicial remedies and they must do so "by clear and

convincing" evidence. *Toney v. White*, 488 F.2d 310, 315 (5th Cir. 1973). Petitioners' "delay" in filing is a direct result of Respondents failure to complete counting until November 17, 2020. Further, Petitioners' filed their initial complaint on November 25, 2020, two days after the Michigan Board of State Canvassers certified the election on November 23, 2020. (R. 49, PgID 3082).

Additionally, the "delay" in filing after Election Day is almost entirely due to Respondents failure to promptly complete counting until weeks after November 3, 2020. Michigan county boards did not complete counting until November 17, 2020, and Defendant Michigan Board of State Canvassers did not do so until November 23, 2020, ECF No. 31 at 4—a mere two days before Petitioners filed their initial complaint on November 25, 2020. Petitioners admittedly would have preferred to file sooner, but needed time to gather statements from dozens of fact witnesses, retain and engage expert witnesses, and gather other data supporting their Complaint, and this additional time was once again a function of the sheer volume of evidence of illegal conduct by Respondents and their collaborators. Respondents cannot now assert the equitable defense of laches, when any prejudice they may suffer is entirely a result of their own actions and misconduct.

Moreover, much of the misconduct identified in the Complaint was not apparent on Election Day, as the evidence of voting irregularities was not discoverable until weeks after the election. William Hartman explains in a sworn statement dated November 18, 2020, that "on November 17th there was a meeting of the Board of Canvassers to determine whether to certify the results of Wayne County" and he had "determined that approximately 71% of Detroit's 134 Absentee Voter

Counting Boards were left unbalanced and unexplained." He and Michele Palmer voted *not* to Certify and only later agreed to certify after a representation of a full audit, but then reversed when they learned there would be no audit. (See ECF No. 6, Ex. 11 &12.) Further, filing a lawsuit while Wayne County was still deliberating whether or not to certify, despite the demonstrated irregularities, would have been premature. Respondents appropriately exhausted their non-judicial remedies by awaiting the decision of the administrative body charged with determining whether the vote count was valid. Id.

It is also disingenuous to try to bottle this slowly counted election into a single day when in fact waiting for late arriving mail ballots and counting mail ballots persisted long after "Election Day."

**III. THE DISTRICT COURT ERRED WHEN IT DISMISSED THE PETITIONERS' CLAIMS BASED ON *COLORADO RIVER* ABSTENTION WITHOUT IDENTIFYING ANY PARALLEL STATE-COURT PROCEEDINGS THAT ADDRESS THE IDENTICAL RELIEF SOUGHT**.

The District Court accepted State Respondent' abstention claim arguments based on Colorado River Water Conservation Dist. v. United States, 424 U.S. 800, 808 (1976), a case addressing concurrent federal and state jurisdiction over water rights. See ECF No. 31 at 19-20. Presumably it did so because the case setting the standard for federal abstention in the voting rights and state election law context, Harman v. Forssenius, 380 U.S. 528, 534, (1965) is not favorable to the Respondents.

This Court rejected the argument that federal courts should dismiss voting rights claims based on federal abstention, emphasizing that abstention may be appropriate where "the federal constitutional question is dependent upon, or may be materially altered by, the determination of an uncertain issue of state law," and "deference to state court adjudication only be made where the issue of state law is uncertain." Harman, 380 U.S. at 534 (citations omitted). But if state law in question "is not fairly subject to an interpretation which will render unnecessary or substantially modify the federal constitutional question," then "it is the duty of the federal court to exercise its properly invoked jurisdiction." *Id.* (citation omitted).

Respondents described several ongoing state proceedings where there is some overlap with the claims and specific unlawful conduct identified in the Complaint. See ECF No. 31 at 21-26. But State Respondents have not identified any uncertain issue of state law that would justify abstention. See ECF No 31 at 21-26. Instead, as described below, the overlaps involve factual matters and the credibility of witnesses, and the finding of these courts would not resolve any uncertainty about state law that would impact Petitioners' constitutional claims (Electors and Elections Clauses and Equal Protection and Due Process Clauses).

Respondents' reliance on *Colorado River* is also misplaced insofar as they contend that abstention would avoid "piecemeal" litigation, *see id.* at 38, because abstention would result in exactly that. The various Michigan State proceedings raise a number of isolated factual and legal issues in separate proceedings, whereas Plaintiffs' Complaint addresses most of the legal claims and factual evidence submitted in

Michigan State courts, and also introduces a number of new issues that are not present in any of the State proceedings. Accordingly, the interest in judicial economy and avoidance of "piecemeal" litigation would be best served by retaining jurisdiction over the federal and state law claims.

Respondents cited to four cases brought in the State courts in Michigan, none of which have the same plaintiffs, and all of which are ongoing and have not been resolved by final orders or judgments. (See ECF Nos. 31-6 to 31-15.)

The significant differences between this case and the foregoing State proceedings would also prevent issue preclusion. A four-element framework finds issue preclusion appropriate if: (1) the disputed issue is identical to that in the previous action, (2) the issue was actually litigated in the previous action, (3) resolution of the issue was necessary to support a final judgment in the prior action, and (4) the party against whom issue preclusion is sought had a full and fair opportunity to litigate the issue in the prior proceeding. See Louisville Bedding Co. v. Perfect Fit Indus., 186 F. Supp. 2d 752, 753-754, 2001 U.S. Dist. LEXIS 9599 (citing Graco Children's Products, Inc. v. Regalo International, LLC, 77 F. Supp. 2d 660, 662 (E.D. Pa. 1999). None of these requirements have been met with respect to petitioners or the claims in the Complaint.

Of equal importance is the fact that the isolated claims in State court do not appear to present evidence demonstrating that a sufficient number of illegal ballots were counted to affect the result of the 2020 General Election. The fact and expert witnesses presented in the Complaint do. As summarized below, the Complaint alleges and

provides supporting evidence that the number of illegal votes is potentially multiples of Biden's 154,188 margin in Michigan. (See ECF No. 6 ¶16).

A. A report from Russell Ramsland, Jr. showing the "physical impossibility" of nearly 385,000 votes injected by four precincts/township on November 4, 2020, that resulted in the counting of nearly 290,000 more ballots processed than available capacity (which is based on statistical analysis that is independent of his analysis of Dominion's flaws), a result which he determined to be "physically impossible" (see Ex. 104 ¶14).

B. A report from Dr. Louis Bouchard finding it to be "statistically impossible" the widely reported "jump" in Biden's vote tally of 141,257 votes during a single time interval (11:31:48 on November 4), see Ex. 110 at 28).

C. A report from Dr. William Briggs, showing that there were approximately 60,000 absentee ballots listed as "unreturned" by voters that either never requested them, or that requested and returned their ballots. (See Ex. 101).

D. A report from Dr. Eric Quinell analyzing the anomalous turnout figures in Wayne and Oakland Counties showing that Biden gained nearly 100% and frequently more than 100% of all "new" voters in certain townships/precincts when compared to the 2016 election, and thus indicates that nearly 87,000 anomalous and likely fraudulent votes came from these precincts. (See Ex. 102).

E. A report from Dr. Stanley Young that looked at the entire State of Michigan and identified nine "outlier" counties that had both significantly increased turnout in 2020 vs. 2016, almost all of which went to Biden totaling over 190,000 suspect "excess" Biden votes (whereas turnout in Michigan's 74 other counties was flat). (See Ex. 110).

F. A report from Robert Wilgus analyzing the absentee ballot data that identified a number of significant anomalies, in particular, 224,525 absentee ballot applications that were both sent and returned on the same day, 288,783 absentee ballots that were sent and returned on the same day, and 78,312 that had the same date for all (i.e., the absentee application was sent/returned on same day as the absentee ballot itself was sent/returned), as well as an additional 217,271 ballots for which there was no return date (i.e., consistent with eyewitness testimony described in Section II below). (See Ex. 110).

G. A report from Thomas Davis showing that in 2020 for larger Michigan counties like Monroe and Oakland Counties, that not only was there a higher percentage of Democrat than Republican absentee voters in every single one of hundreds of precincts, but that the Democrat advantage (i.e., the difference in the percentage of Democrat vs. Republican absentee voter) was consistent (+25%-30%) and the differences were highly correlated, whereas in 2016 the differences were uncorrelated. (See Ex. 110).

H. A report by an affiant whose name must be redacted to protect his safety concludes that "the results of the analysis and the pattern seen in the included graph strongly suggest a systemic, system-wide algorithm was enacted by an outside agent, causing the results of Michigan's vote tallies to be inflated by somewhere between three and five-point six percentage points. Statistical estimating yields that in Michigan, the best estimate of the number of impacted votes is 162,400. However, a 95% confidence interval calculation yields that as many as 276,080 votes may have been impacted." (See Ex. 111 ¶13).

## IV. THE DISTRICT COURT ERRED WHEN IT HELD THAT PETITIONERS, WHO ARE CANDIDATES FOR THE OFFICE OF PRESIDENTIAL ELECTOR, LACKED STANDING TO PURSUE THEIR EQUAL PROTECTION AND OTHER CLAIMS

Petitioners are not simply voters seeking to vindicate their rights to an equal and undiluted vote, as guaranteed by Michigan law and the Equal Protection Clause of the U.S. Constitution, as construed by this court in *Reynolds v. Sims*, 377 U.S. 533 (1964) and its progeny. Rather, Petitioners are candidates for public office. Having been selected by the Republican Party of Michigan at its 2019 Fall convention, and their names having been certified as such to the Michigan Secretary of States pursuant to Michigan Election Law 168.42, they were nominated to the office of Presidential Electors in the November 2020 election pursuant to MCL § 168.43. Election to this office is limited to individuals who have been citizens of the United States for 10 years, and registered voters of the district (or the

state) for at least 1 year, and carries specific responsibilities defined by law, namely voting in the Electoral College for President and Vice-President. MCL §168.47. While their names do not appear on the ballot, Michigan Law makes it clear that the votes cast by voters in the presidential election are actually votes for the presidential electors nominated by the party of the presidential candidate listed on the ballot. MCL § 168.45.[2]

The standing of Presidential Electors to challenge fraud, illegality and disenfranchisement in a presidential election rests on a constitutional and statutory foundation—as if they are candidates, not voters.[3] Theirs is not a generalized grievance shared by all other voters; they are particularly aggrieved by being wrongly denied the responsibility, emoluments and honor of serving as members of the Electoral College, as provided by Michigan law. Petitioners have the requisite legal standing, and the district court must be reversed on this point. As in the Eighth Circuit case of *Carson v. Simon*, 978 F.3d 1051 (8th Cir. 2020),"[b]ecause Minnesota law plainly treats presidential electors as candidates, we do, too." *Id*. at 1057. And this Court's opinion in *Bush v. Gore*, 531 U.S. 98 (2000) (failure to set state-wide standards for recount of votes for presidential electors violated federal Equal Protection), leaves no doubt that presidential candidates have standing to raise post-election challenges to the

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[2] This section provides: " Marking a cross (X) or a check mark ( ) in the circle under the party name of a political party, at the general November election in a presidential year, shall not be considered and taken as a direct vote for the candidates of that political party for president and vice-president or either of them, but, as to the presidential vote, as a vote for the entire list or set of presidential electors chosen by that political party and certified to the secretary of state pursuant to this chapter."

[3] *See* https://sos.ga.gov/index.php/Elections/voter_registration_statistics, last visited November 5, 2020.

manner in which votes are tabulated and counted. The district court therefore clearly erred in concluding that Petitioners lack standing to raise this post-election challenge to the manner in which the vote for *their* election for public office was conducted.

There is further support for Petitioners' standing in the Court's recent decision in *Carney v. Adams* involving a challenge to the Delaware requirement that you had to be a member of a major political party to apply for appointment as a judge. In Adams, the Court reiterated the standard doctrine about generalized grievance not being sufficient to confer standing and held that *Adams* didn't have standing because he "has not shown that he was 'able and ready' to apply for a judicial vacancy in the imminent future". In this case, however, Petitioners were not only "able and ready" to serve as presidential electors, they were nominated to that office in accordance with Michigan law.

The Respondents have presented compelling evidence that Respondents not only failed to administer the November 3, 2020 election in compliance with the manner prescribed by the Michigan Legislature in the Michigan Election Code, MCL §§ 168.730-738, but that Respondents executed a scheme and artifice to fraudulently and illegally manipulate the vote count to ensure the election of Joe Biden as President of the United States. This conduct violated Petitioners' equal protection and due process rights, as well their rights under the Michigan Election Code and Constitution. *See generally* MCL §§ 168.730-738 & Mich. Const. 1963, art. 2, §4(1).

In considering Petitioners' constitutional and voting rights claims under a "totality of the circumstances" standard, this Court must consider the cumulative effect of the specific instances or categories of Respondents' voter dilution and disenfranchisement claims. Taken together, these various forms of unlawful and unconstitutional conduct destroyed or shifted tens or hundreds of thousands of Trump votes, and illegally added tens or hundreds of thousands of Biden votes, changing the result of the election, and effectively disenfranchising the majority of Michigan voters. If such errors are not address we may be in a similar situation as Kenya, where voting has been viewed as not simply irregular but a complete sham. (Coram: Maraga, CJ & P, Mwilu, DCJ & V-P, Ojwang, Wanjala, Njoki and Lenaola, SCJJ)

## CONCLUSION

WHEREFORE, the Petitioners respectfully request this Honorable Court enter an emergency order instructing Respondents to de-certify the results of the General Election for the Office of the President, pending disposition of the forthcoming Petition for Certiorari. Alternatively, Petitioners seek an order instructing the Respondents to certify the results of the General Election for Office of the President in favor of President Donald Trump.

Petitioners seek an emergency order prohibiting Respondents from including in any certified results from the General Election the tabulation of absentee and mailing ballots which do not comply with the Michigan Election Code, including the tabulation of absentee and mail-in ballots Trump Campaign's watchers were prevented from observing

or based on the tabulation of invalidly cast absentee and mail-in ballots which (i) lack a secrecy envelope, or contain on that envelope any text, mark, or symbol which reveals the elector's identity, political affiliation, or candidate preference, (ii) do not include on the outside envelope a completed declaration that is dated and signed by the elector, (iii) are delivered in-person by third parties for non-disabled voters, or (iv) any of the other Michigan Election Code violations set forth in Section II of the petition.

Petitioners respectfully request an order of preservation and production of all registration data, ballots, envelopes, voting machines necessary for a final resolution of this dispute.

Respectfully submitted,

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Date: December 10, 2020

CERTIFICATE OF COMPLIANCE

The attached Writ of Certiorari complies with the type-volume limitation. As required by Supreme Court Rule 33.1(h), I certify that the document contains 8,324 words, excluding the parts of the document that are exempted by Supreme Court Rule 33.1(d).

Respectfully submitted,

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Date: December 11, 2020

CASE NO.

IN THE SUPREME COURT OF THE UNITED STATES

TIMOTHY KING, MARIAN ELLEN SHERIDAN, JOHN EARL HAGGARD, CHARLES JAMES RITCHARD, JAMES DAVID HOOPER and DAREN WADE RUBINGH,

Plaintiffs/Petitioners,

v.

GRETCHEN WHITMER, in her official capacity as Governor of the State of Michigan, JOCELYN BENSON, in her official capacity as Michigan Secretary of State and the Michigan BOARD OF STATE CANVASSERS

Defendants/Respondents,

and

CITY OF DETROIT, DEMOCRATIC NATIONAL COMMITTEE and MICHIGAN DEMOCRATIC PARTY, and ROBERT DAVIS,

Intervenor-Defendants/Respondents.

PROOF OF SERVICE

STATE OF MICHIGAN)
)ss
COUNTY OF WAYNE )

STEFANIE LAMBERT JUNTTILA, affirms, deposes and states that on the 11th day of December, 2020, she did cause to be served the following:

1. PETITION FOR WRIT OF CERTIORARI On Petition for a Writ of Certiorari to the United States Federal District Court for the Eastern District of Michigan;
2. Attached Exhibits;
3. Certificate of Conformity;
4. Proof of Service

UPON:

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By email and by placing said copies in a properly addressed envelope with sufficient postage fully prepaid, and placing in a U.S. Mail Receptacle.

FURTHER AFFIANT SAYETH NOT.

/s/ Stefanie Lambert Junttila
STEFANIE LAMBERT JUNTTILA

# EXHIBIT B

**From:** Grill, Erik (AG)
**To:** Meingast, Heather (AG); Albro, Lisa (AG)
**Subject:** FW: King v. Whitmer E.D. Mich. Case No. 2:20 cv 13134
**Date:** Tuesday, December 22, 2020 10:52:09 AM
**Attachments:**

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**From:** Stefanie Lambert attorneystefanielambert@gmail.com
**Sent:** Tuesday, December 22, 2020 10:34 AM
**To:** Grill, Erik (AG) <GrillE@michigan.gov>
**Cc:** Howard Kleinhendler <howard@kleinhendler.com>
**Subject:** Re: King v. Whitmer - E.D. Mich. Case No. 2:20-cv-13134

Counsel:

As you know, this case is on appeal to the Sixth Circuit and to the United States Supreme Court. Therefore we are not in a position to respond to your request below until these appeals are decided. Further, we do not believe the district court has jurisdiction to consider your motion while the case is on appeal.

Best regards,

Stefanie Lambert Junttila

On Tue, Dec 22, 2020 at 10:11 AM Grill, Erik (AG) <GrillE@michigan.gov> wrote:

> Counsel for Plaintiffs,
>
> The Governor Whitmer, Secretary Benson, and the Board of State Canvassers also intend to file a motion to dismiss the complaint this afternoon. Please let me know by 3 p.m. today if you will either concur in the motion or stipulate to dismiss the complaint.
>
> Erik A. Grill
> Assistant Attorney General
> Civil Litigation, Elections, & Employment Division

# EXHIBIT C

**UNITED STATES DISTRICT COURT**
**FOR THE DISTRICT OF COLUMBIA**

| | |
|---|---|
| **WISCONSIN VOTERS ALLIANCE, *et al.*,**<br><br>**Plaintiffs,**<br><br>**v.**<br><br>**VICE PRESIDENT MICHAEL R. PENCE, *et al.*,**<br><br>**Defendants.** | **Civil Action No. 20-3791 (JEB)** |

**MEMORANDUM OPINION**

Plaintiffs' aims in this election challenge are bold indeed: they ask this Court to declare unconstitutional several decades-old federal statutes governing the appointment of electors and the counting of electoral votes for President of the United States; to invalidate multiple state statutes regulating the certification of Presidential votes; to ignore certain Supreme Court decisions; and, the *coup de grace*, to enjoin the U.S. Congress from counting the electoral votes on January 6, 2021, and declaring Joseph R. Biden the next President.

Voter groups and individual voters from the states of Wisconsin, Pennsylvania, Georgia, Michigan, and Arizona have brought this action against Vice President Michael R. Pence, in his official capacity as President of the Senate; both houses of Congress and the Electoral College itself; and various leaders of the five aforementioned states. Simultaneous with the filing of their Complaint, Plaintiffs moved this Court to preliminarily enjoin the certifying of the electors from the five states and the counting of their votes. In addition to being filed on behalf of Plaintiffs without standing and (at least as to the state Defendants) in the wrong court and with no effort to even serve their adversaries, the suit rests on a fundamental and obvious misreading of the

Constitution. It would be risible were its target not so grave: the undermining of a democratic election for President of the United States. The Court will deny the Motion.

## I. Background

To say that Plaintiffs' 116-page Complaint, replete with 310 footnotes, is prolix would be a gross understatement. After explicitly disclaiming any theory of fraud, see ECF No. 1 (Complaint), ¶ 44 ("This lawsuit is not about voter fraud."), Plaintiffs spend scores of pages cataloguing every conceivable discrepancy or irregularity in the 2020 vote in the five relevant states, already debunked or not, most of which they nonetheless describe as a species of fraud. E.g., id., at 37–109. Those allegations notwithstanding, Plaintiffs' central contention is that certain federal and state election statutes ignore the express mandate of Article II of the Constitution, thus rendering them invalid. Id. at 109–12. Although the Complaint also asserts causes of action for violations of the Equal Protection and Due Process Clauses, those are merely derivative of its first count. Id. at 112–15.

In order to provide an equitable briefing and hearing schedule on a very tight timetable, this Court immediately instructed Plaintiffs to file proofs of service on Defendants so that they could proceed on their preliminary-injunction Motion. See 12/23/20 Min. Order; Fed. R. Civ. P. 65(a)(1) ("The court may issue a preliminary injunction only on notice to the adverse party."). Twelve days later, Plaintiffs have still not provided proof of notice to any Defendant, let alone filed a single proof of service or explained their inability to do so.

## II. Legal Standard

"A preliminary injunction is an extraordinary remedy never awarded as of right." Winter v. NRDC, 555 U.S. 7, 24 (2008). "A plaintiff seeking a preliminary injunction must establish [1] that he is likely to succeed on the merits, [2] that he is likely to suffer irreparable harm in the

absence of preliminary relief, [3] that the balance of equities tips in his favor, and [4] that an injunction is in the public interest." Sherley v. Sebelius, 644 F.3d 388, 392 (D.C. Cir. 2011) (quoting Winter, 555 U.S. at 20). "The moving party bears the burden of persuasion and must demonstrate, 'by a clear showing,' that the requested relief is warranted." Hospitality Staffing Solutions, LLC v. Reyes, 736 F. Supp. 2d 192, 197 (D.D.C. 2010) (citing Chaplaincy of Full Gospel Churches v. England, 454 F.3d 290, 297 (D.C. Cir. 2006)).

Before the Supreme Court's decision in Winter, courts weighed these factors on a "sliding scale," allowing "an unusually strong showing on one of the factors" to overcome a weaker showing on another. Davis v. Pension Ben. Guar. Corp., 571 F.3d 1288, 1291–92 (D.C. Cir. 2009) (quoting Davenport v. Int'l Bhd. of Teamsters, 166 F.3d 356, 361 (D.C. Cir. 1999)). Both before and after Winter, however, one thing is clear: a failure to show a likelihood of success on the merits alone is sufficient to defeat the motion. Ark. Dairy Coop. Ass'n, Inc. v. USDA, 573 F.3d 815, 832 (D.C. Cir. 2009) (citing Apotex, Inc. v. FDA, 449 F.3d 1249, 1253–54 (D.C. Cir. 2006)); Archdiocese of Wash. v. Wash. Metro. Area Transit Auth., 281 F. Supp. 3d 88, 99 (D.D.C. 2017), aff'd on other grounds, 897 F.3d 314 (D.C. Cir. 2018).

## III. Analysis

Given that time is short and the legal errors underpinning this action manifold, the Court treats only the central ones and in the order of who, where, what, and why. Most obviously, Plaintiffs have not demonstrated the "irreducible constitutional minimum of standing." Lujan v. Defs. of Wildlife, 504 U.S. 555, 560 (1992). Although they claim to have been "disenfranchised," ECF No. 4 (PI Mem.) at 37, this is plainly not true. Their votes have been counted and their electors certified pursuant to state-authorized procedures; indeed, any vote nullification would obtain only were their own suit to succeed. To the extent that they argue

more broadly that voters maintain an interest in an election conducted in conformity with the Constitution, id. at 38, they merely assert a "generalized grievance" stemming from an attempt to have the Government act in accordance with their view of the law. Hollingsworth v. Perry, 570 U.S. 693, 706 (2013). This does not satisfy Article III's demand for a "concrete and particularized" injury, id. at 704, as other courts have recently noted in rejecting comparable election challenges. See Wood v. Raffensperger, 981 F.3d 1307, 1314–15 (11th Cir. 2020); Bowyer v. Ducey, No. 20-2321, 2020 WL 7238261, at *4–5 (D. Ariz. Dec. 9, 2020); King v. Whitmer, No. 20-13134, 2020 WL 7134198, at *10 (E.D. Mich. Dec. 7, 2020). Plaintiffs' contention that the state legislature is being deprived of its authority to certify elections, moreover, cannot suffice to establish a distinct injury-in-fact to the individuals and organizations before this Court. Finally, to the extent that Plaintiffs seek an injunction preventing certain state officials from certifying their election results, see PI Mem. at 1, that claim is moot as certification has already occurred. Wood, 981 F.3d at 1317.

Moving on from subject-matter jurisdiction, the Court must also pause at personal jurisdiction. Plaintiffs cannot simply sue anyone they wish here in the District of Columbia. On the contrary, they must find a court or courts that have personal jurisdiction over each Defendant, and they never explain how a court in this city can subject to its jurisdiction, say, the Majority Leader of the Wisconsin State Senate. Absent personal jurisdiction over a particular Defendant, of course, this Court lacks authority to compel him to do anything.

Even if the Court had subject-matter and personal jurisdiction, it still could not rule in Plaintiffs' favor because their central contention is flat-out wrong. "Plaintiffs claim that Article II of the U.S. Constitution provides a voter a constitutional right to the voter's Presidential vote being certified as part of the state legislature's post-election certification of Presidential electors.

Absence [*sic*] such certification, the Presidential electors' votes from that state cannot be counted by the federal Defendants toward the election of President and Vice President." Compl., ¶ 32 (emphasis added); see also PI Mem. at 1. More specifically, "Plaintiffs [*sic*] constitutional claims in this lawsuit are principally based on one sentence in Article II of the U.S. Constitution." Compl., ¶ 54; see also PI Mem. at 1. That sentence states in relevant part that the President "shall hold his Office during the Term of four Years, and . . . be elected[] as follows: [¶] Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors . . . ." U.S. Const., art. II, § 1.

Plaintiffs somehow interpret this straightforward passage to mean that state legislatures alone must certify Presidential votes and Presidential electors after each election, and that Governors or other entities have no constitutionally permitted role. See Compl., ¶ 55. As a result, state statutes that delegate the certification to the Secretary of State or the Governor or anyone else are invalid. Id., ¶ 58. That, however, is not at all what Article II says. The above-quoted language makes manifest that a state appoints electors in "such Manner as the Legislature thereof may direct." So if the legislature directs that the Governor, Secretary of State, or other executive-branch entity shall make the certification, that is entirely constitutional. This is precisely what has happened: in each of the five states, the legislature has passed a statute directing how votes are to be certified and electors selected. See Ariz. Rev. Stat. Ann. § 16-212(B); Ga. Code Ann. § 21-2-499(b); Mich. Comp. Laws Ann. § 168.46; Wis. Stat. Ann. § 7.70(5)(b); 25 Pa. Stat. § 3166.

For example, Georgia requires its Secretary of State to "certify the votes cast for all candidates . . . and lay the returns for presidential electors before the Governor. The Governor shall enumerate and ascertain the number of votes for each person so voted and shall certify the

slates of presidential electors receiving the highest number of votes." Ga. Code Ann. § 21-2-499(b). Similarly, under Michigan law, "the governor shall certify, under the seal of the state, to the United States secretary of state, the names and addresses of the electors of this state chosen as electors of president and vice-president of the United States." Mich. Comp. Laws Ann. § 168.46. Plaintiffs' theory that all of these laws are unconstitutional and that the Court should instead require state legislatures themselves to certify every Presidential election lies somewhere between a willful misreading of the Constitution and fantasy.

Plaintiffs readily acknowledge that their position also means that the Supreme Court's decisions in Bush v. Gore, 531 U.S. 98 (2000), and Texas v. Pennsylvania, No. 155 (Orig.), 2020 WL 7296814 (U.S. Dec. 11, 2020), "are in constitutional error." Compl., ¶ 76. They do not, however, explain how this District Court has authority to disregard Supreme Court precedent. Nor do they ever mention why they have waited until seven weeks after the election to bring this action and seek a preliminary injunction based on purportedly unconstitutional statutes that have existed for decades — since 1948 in the case of the federal ones. It is not a stretch to find a serious lack of good faith here. See Trump v. Wis. Elections Comm'n, No. 20-3414, 2020 WL 7654295, at *4 (7th Cir. Dec. 24, 2020).

Yet even that may be letting Plaintiffs off the hook too lightly. Their failure to make any effort to serve or formally notify any Defendant — even after reminder by the Court in its Minute Order — renders it difficult to believe that the suit is meant seriously. Courts are not instruments through which parties engage in such gamesmanship or symbolic political gestures. As a result, at the conclusion of this litigation, the Court will determine whether to issue an order to show cause why this matter should not be referred to its Committee on Grievances for potential discipline of Plaintiffs' counsel.

## IV. Conclusion

As Plaintiffs have established no likelihood of success on the merits here, the Court will deny their Motion for Preliminary Injunction. A contemporaneous Order so stating will issue this day.

/s/ James E. Boasberg
JAMES E. BOASBERG
United States District Judge

Date: January 4, 2021

# EXHIBIT D

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

TIMOTHY KING, MARIAN ELLEN SHERIDAN, JOHN EARL HAGGARD, CHARLES JAMES RITCHARD, JAMES DAVID HOOPER, and DARREN WADE RUBINGH,

Plaintiffs,

v

GRETCHEN WHITMER, in her official capacity as Governor of the State of Michigan, JOCELYN BENSON, in her official capacity as Michigan Secretary of State and the Michigan BOARD OF STATE CANVASSERS,

Defendants,

CITY OF DETROIT,

Intervening Defendant,

ROBERT DAVIS,

Intervening Defendant,

DEMOCRATIC NATIONAL COMMITTEE and MICHIGAN DEMOCRATIC PARTY,

Intervening Defendant.

No. 2-20-cv-13134

HON. LINDA V. PARKER

MAG. R. STEVEN WHALEN

**DECLARATION OF HEATHER S. MEINGAST IN SUPPORT OF DEFENDANTS WHITMER AND BENSON'S MOTION FOR SANCTIONS UNDER 28 U.S.C. § 1927**

**DECLARATION OF HEATHER S. MEINGAST IN SUPPORT OF DEFENDANTS WHITMER AND BENSON'S MOTION FOR SANCTIONS UNDER 28 U.S.C. § 1927**

I, Assistant Attorney General Heather S. Meingast, being duly sworn, voluntarily state as follows:

1. I have been licensed to practice law in the State of Michigan since 1998.

2. I primarily practice law in Ingham County, Michigan.

3. I have worked for the Michigan Department of Attorney General since February 2004.

4. During my nearly 17 years with the office, I have worked in the Department's Public Employment, Elections and Tort Division as well as in the Appellate Division and was formerly the Division Chief of the Opinions Division. During these years, I frequently handled election cases in state and federal court and at the trial court and appellate level.

5. I am presently the Division Chief for the Civil Litigation, Employment and Elections Division, and have held that position since February 2019. In this position, I supervise five attorneys, including Assistant Attorney General Erik A. Grill.

6. Assistant Attorney General Grill and I worked together researching and drafting the various submissions filed by Defendants Whitmer, Benson, and the Board of State Canvassers in this matter, with each of us handling different issues and working on separate parts of the submissions.

7. To the best of my recollection, the following chart accurately reflects the time I personally spent on various activities performed in defense of this matter:

| **Date** | **Activity** | **Hours** |
|---|---|---|
| 11/27/20 | Review Plaintiffs' Complaint | 1.0 |

| | | |
|---|---|---|
| 11/27/20 | Email to clients re: new filing | 0.20 |
| 11/30/20 | Review Plaintiffs' Amended Complaint and exhibits | 2.0 |
| 11/30/20 | Review Plaintiffs' emergency motion for declaratory judgment and injunctive relief | 1.0 |
| 12/1/20 | Email to clients updating on case and service | 0.1 |
| 12/2/20 | Email to clients advising of due date for response to injunction motion | 0.1 |
| 12/2/20 | Legal research on mootness and abstention doctrines | 1.0 |
| 12/2/20 | Draft portions of Defendants' response to Plaintiffs' emergency motion for declaratory and injunctive relief, including introduction, statement of facts, mootness and abstention arguments, and state law claims | 4.0 |
| 12/2/20 | Review and edit Brater Declaration in support of Defendants' Response to Plaintiffs' emergency motion for declaratory and injunctive relief | 0.5 |
| 12/2/20 | Email to clients with draft of response brief | 0.1 |
| 12/2/20 | Review and edit draft of Defendants' Response to Plaintiffs' emergency motion for declaratory and injunctive relief before filing | 0.75 |
| 12/2/20 | Review and edit response to emergency motion to seal | 0.3 |
| 12/2/20 | Emails to clients with filed briefs | 0.1 |
| 12/7/20 | Review December 7, 2020, Opinion & Order | 0.5 |
| 12/7/20 | Emails to clients attaching December 7 Opinion & Order | 0.1 |
| 12/22/20 | Review and edit Defendants' motion to dismiss and brief for filing | 1.5 |
| 1/14/20 | Review voluntary dismissal and email clients with update | 0.3 |

| | |
|---|---|
| Total Hours | 13.55 |
| Reasonable rate[1] | $395/hr |

Total Attorney Fees/Costs $5,352.25

I declare under penalty of perjury that the foregoing is true and correct.

Heather S. Meingast Dated: January 28, 2021

[1] Based on the State Bar of Michigan's 2020 Economics of Law Practice in Michigan Survey, the median and mean billing rates for election law attorneys in the Lansing area is $300 and $395 respectively. See https://www.michbar.org/file/pmrc/articles/0000156.pdf. Given my years of experience and supervisory position, an hourly rate of $395 is reasonable in this matter.

# EXHIBIT E

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

TIMOTHY KING, MARIAN ELLEN SHERIDAN, JOHN EARL HAGGARD, CHARLES JAMES RITCHARD, JAMES DAVID HOOPER, and DARREN WADE RUBINGH,

Plaintiffs,

v

GRETCHEN WHITMER, in her official capacity as Governor of the State of Michigan, JOCELYN BENSON, in her official capacity as Michigan Secretary of State and the Michigan BOARD OF STATE CANVASSERS,

Defendants,

CITY OF DETROIT,

Intervening Defendant,

ROBERT DAVIS,

Intervening Defendant,

DEMOCRATIC NATIONAL COMMITTEE and MICHIGAN DEMOCRATIC PARTY,

Intervening Defendant.

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No. 2-20-cv-13134

HON. LINDA V. PARKER

MAG. R. STEVEN WHALEN

**DECLARATION OF ERIK A. GRILL IN SUPPORT OF DEFENDANTS WHITMER AND BENSON'S MOTION FOR SANCTIONS UNDER 28 U.S.C. § 1927**

**DELCARATION OF ERIK A. GRILL IN SUPPORT OF DEFENDANTS WHITMER AND BENSON'S MOTION FOR SANCTIONS UNDER 28 U.S.C. § 1927**

I, Assistant Attorney General Erik A. Grill, being duly sworn, voluntarily state as follows:

1. I have been licensed to practice law in the State of Michigan since 2002.

2. I primarily practice law in Ingham County, Michigan.

3. I have worked for the State of Michigan since December 2002.

4. During my more than 18 years of practice, I have worked in the Attorney General's State Operations Division, the Public Employment, Elections and Tort Division, and the Civil Litigation, Employment and Elections Division. I have also worked for the General Counsel of the Department of Insurance and Financial Services.

5. I am presently a Senior Attorney in the Civil Litigation, Elections & Employment Division. In this position, I have unique experience and substantial expertise in the field of election law, and I have frequently handled election cases in state and federal courts at both the trial court and appellate court levels.

6. Collaborating with my Division Chief, Heather Meingast, I researched and drafted the various submissions filed by Defendants Whitmer, Benson, and the Board of State Canvassers in this matter, with each of us handling different issues and working on separate parts of the submissions.

7. To the best of my recollection, the following chart accurately reflects the time I personally spent on various activities performed in defense of this matter:

| Date | Activity | Hours |
|---|---|---|
| 11/27/20 | Review Plaintiffs' Complaint | 1.0 |
| 11/29/20 | Review Plaintiffs' Amended Complaint and exhibits | 1.0 |
| 11/30/20 | Review Plaintiffs' emergency motion for declaratory judgment and injunctive relief | 1.0 |
| 12/2/20 | Legal research on laches, standing, Eleventh Amendment, Electors & Elections Clauses, Equal Protection, and Due Process. | 2.0 |
| 12/2/20 | Draft portions of Defendants' response to Plaintiffs' emergency motion for declaratory and injunctive relief | 5.0 |
| 12/2/20 | Review and edit Brater Declaration in support of Defendants' Response to Plaintiffs' emergency motion for declaratory and injunctive relief | 0.5 |
| 12/2/20 | Review and edit draft of Defendants' Response to Plaintiffs' emergency motion for declaratory and injunctive relief before filing | 0.5 |
| 12/2/20 | Draft response to emergency motion to seal | 0.5 |
| 12/7/20 | Review December 7, 2020, Opinion & Order | 0.5 |
| 12/22/20 | Draft portions of Defendants' motion to dismiss and review; Review and edit draft before filing | 2 |
| 1/14/20 | Review City of Detroit's Motion for Sanctions and draft Defendants' concurrence with that motion | 1.0 |
| 1/19/20 | Review voluntary dismissal; Legal research on federal rules for voluntary dismissal | 0.25 |

| | |
|---|---|
| Total Hours | 15.25 |
| Reasonable rate[1] | $375/hr |

Total Attorney Fees/Costs $5,718.75

I declare under penalty of perjury that the foregoing is true and correct.

Erik A. Grill

Dated: January 28, 2021

[1] Based on the State Bar of Michigan's 2020 Economics of Law Practice in Michigan Survey, the median and mean billing rates for election law attorneys in the Lansing area is $300 and $395 respectively. See https://www.michbar.org/file/pmrc/articles/0000156.pdf. Given my years of experience, an hourly rate of $375 is reasonable in this matter.